

5 APRIL 1948

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Monday, 5 April 1948

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2           INTERNATIONAL MILITARY TRIBUNAL  
3           FOR THE FAR EAST  
4           Court House of the Tribunal  
5           War Ministry Building  
6           Tokyo, Japan

7           The Tribunal met, pursuant to adjournment,  
8 at 0930.

9 Appearances:

10          For the Tribunal, all Members sitting.  
11          For the Prosecution Section, same as before.  
12          For the Defense Section, same as before.

13          - - -  
14          (English to Japanese and Japanese  
15          to English interpretation was made by the  
16          Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present  
4 except UMEZU, MATSUI and SHIRATORI who are represented  
5 by counsel. The Sugamo Prison surgeon certified that  
6 they are ill and unable to attend the trial today. The  
7 certificates will be recorded and filed.

8 Mr. Logan.

9 MR. LOGAN: If the Tribunal please, I shall  
10 continue reading KIDO's summation, page 130, paragraph  
11 154.

12 XII. (b) June 1, 1940 - September 12, 1940.

13 154. With respect to KIDO's activities from  
14 June 1, 1940 to September 9, 1940 the prosecution  
15 makes a few broad general remarks. We point out  
16 that KIDO had no duty to make protests to the Cabinet  
17 Ministers, that he did confer with the Emperor and  
18 that KIDO did not accept various views without objec-  
19 tion as contended by the prosecution. It was during  
20 this period of time that KIDO received information  
21 from the Foreign Minister of what transpired at the  
22 Four Ministers' Conference regarding French Indo-China  
23 as shown in his diary of June 19, 1940. He received  
24 information from Foreign Minister ARITA about a  
25

(489. Par. JJ-53, T. 41,094-41,095

490. Ex. 619, T. 6824)

conversation he had with Ambassador Grew concerning  
1 a treaty between the United States and Japan, as  
2 shown in his diary of June 27, 1940. The prosecu-  
3 tion retreats from its contention that these  
4 exhibits showed KIDO's attitude towards the United  
5 States, Great Britain, and the Netherlands, after KIDO  
6 had pointed out in his affidavit the prosecution's  
7 erroneous conclusions, and now only claims that it  
8 shows he had knowledge. On July 1, 1940 as shown in  
9 his diary Foreign Minister ARITA told him about  
10 various matters including the situation in Hongkong,  
11 the negotiations between Japan and America, and requests  
12 from Germany of withdrawal of representatives from  
13 certain countries, the Netherlands East Indies economic  
14 problems, and the probability of sending an economic  
15 mission to French Indo-China and the Netherlands East  
16 Indies. As is shown in the same diary entry KIDO did  
17 report these matters to the Emperor. The prosecution  
18 ignores KIDO's diary entry of July 5, 1940 and his  
19 affidavit reciting the plot to kill Premier YONAI,  
20 Mr. MACHIDA, Count MAKINO, Baron HARADA, Baron ICHIKI,  
21 491. Ex. 1294 as Cor. by Lang. Sec.  
22 T. 38,680  
23 492. Doc. 0003, Tr. 16,851  
24 493. Aff. par. 138-139, Tr. 30,897-30,898  
25 494. Ex. 1295, T. 11,710  
495. Ex. 532, T. 6,241)

1 Mr. KIDEA, Admiral OKADA, Mr. YUASA, and Household  
2 Minister MATSUDIARA, who were all close personal  
3 friends of KIDO, and KIDO was also on the list.  
4 His diary for that date shows that he reported this  
5 to the Emperor.

6 155. His diary of July 7, 1940 <sup>497</sup> shows that  
7 there were rumors of a political change and Baron  
8 HIRANUMA favored the appointment of Prince KONOYE.  
9 His entry of July 8, 1940 <sup>498</sup> reveals that the Army  
10 supported Prince KONOYE. As this entry shows, KIDO  
11 received this report from Vice War Minister ANAMI  
12 but did not express his opinion. Prince KONOYE was  
13 the overwhelmingly popular choice as Premier, also  
14 having the backing of the political moves which were  
15 steadily being taken to counter the Army's advance  
16 in the political field. <sup>499</sup> If KONOYE had not been  
17 recommended the result would have been to hand over  
18 political power entirely to the Army at that time.

19 KIDO's Diary also shows that he discussed these matters  
20 with the Emperor on that date. The diary of July 14  
21 <sup>500</sup> 1940 also shows that he discussed with the Emperor  
22 the question of heavy artillery mobilization in South

23 (496. Aff. par. 141, Tr. 30,899  
24 497. Ex. 532, Tr. 6,242  
25 498. Ex. 532, Tr. 6,242-6,244  
499. Ex. 143, Tr. 30,900-30,901  
500. Ex. 534, Tr. 6,259)

1 China. This dicary entry also reveals that when re-  
2 quested to obtain information, in accordance with his  
3 duty, KIDO avoided conferring directly with the military  
4 authorities and had the chief aide de camp to the  
5 Emperor make an investigation. It shows that it was  
6 not part of KIDO's duties to contact the military  
7 authorities with respect to operations. <sup>501</sup>

8 156. The YONAI Cabinet fell after War Minister  
9 HATA's resignation and the Army refused to suggest a  
10 successor as related in KIDO's Diary of July 16,  
11 <sup>502</sup> All the evidence shows KIDO had no part in  
12 the reasons for the fall of this Cabinet. <sup>503</sup> KIDO  
13 conferred with the Emperor and the Emperor requested  
14 him to ask the President of the Privy Council and the  
15 former Premier about the selection of the head of an  
16 incoming cabinet, and to report their answers after  
17 consultation with the Senior Statesmen, which he did.  
18 KIDO was requested to arrange the council of those  
19 people in the palace and that he himself should par-  
20 ticipate in it. Attention is directed to the fact  
21 that the method of proceeding was ordered by the Emperor.  
22

23 (501. Aff. par. 144, Tr. 30,901  
24 502. Pros. Ex. 532, Tr. 6244-6248  
25 503. Tr. 28,918-28,944-29,945,  
Tr. 36,580)

504

157. His diary of July 17, 1940 sets

1 forth the conference of the Senior Statesmen. WAKATSUKI,  
2 former head of the Minseito Party, was the first to  
3 recommend KONOYE. WAKATSUKI, a prosecution witness,  
4 has never been represented as a militarist. KONOYE  
5 was the popular choice of all those present and he  
6 was the popular choice of the political parties, as  
7 well as the Army. When KIDO reported the recommenda-  
8 tion of the Senior Statesmen to the throne, the Emperor  
9 asked KIDO if he could give KONOYE some advice -- that  
10 is, that KONOYE should be prudent in the choice of  
11 the Foreign and Finance Ministers, as the situation  
12 at home and abroad was very grave. KIDO told him it  
13 would be a good idea to do so, all of which appears  
14 in the diary of July 17, 1940. KIDO's Diary of July  
15 505  
16 18, 1940 reveals that KIDO deplored the fact that  
17 the former War Minister had recommended TOJO while  
18 KONOYE was in the midst of forming a cabinet and KIDO  
19 recorded his wish that this " \* \* \* instance might not  
20 set a precedent."

158. On August 9, 1940 KIDO had an audience  
21 506  
22 with the Emperor wherein the Emperor expressed a  
23 regret that the new Foreign Minister MATSUOKA " \* \* failed  
24 (504. Ex. 532, Tr. 6249-6256  
25 505. Ex. 539, Tr. 6266-6267  
506. Diary, Par. 148, Tr. 30,905)

to have any clear perspective of America's future policy." On September 9, 1940 KIDO received a report that the military agreement parley for a peaceful advance into Indo-China had, "\*\*\* taken a turn for the worse since the advance of one battalion or so of our troops into French Indo-China."<sup>507</sup> While it is true that this entry of the diary does not show KIDO's indignation at the actions of the military authorities, he was indignant at the operations of the military as appears in his diary entry of September 26, 1940,<sup>508</sup> when after hearing that an Army unit had landed at Indo-China to bomb Haifong he stated in his diary, "It is indeed regrettable that such measures are taken by those in the field who do not understand the general situation. It is people like this who make the grave blunders."

159. In September 1940 MATSUOKA's suggestion that an ultimatum be sent to French Indo-China was pending. The Emperor advised KIDO, as is shown in his diary of September 14, 1940<sup>509</sup> that the views of MATSUOKA and of the Army General Staff did not coincide exactly and that there would be no other way

23 (507. Ex. 626, Tr. 6971  
24 508. Ex. 643, Tr. 7049 as Cor. by Lang. Sec. on  
25 Mar. 18, 1948.  
509. Ex. 627 as Cor. by Lang. Sec. Tr. 7029,  
Tr. 7103, Tr. 36,680)

1        except to let the government carry out its policy under  
2        the present circumstances. KIDO agreed with this as  
3        is shown in the diary, and KIDO recognized that the  
4        situation was very grave. The Emperor did not show  
5        hearty approval. KIDO added that he should direct  
6        the government to take a cautious attitude. In render-  
7        ing his assistance, KIDO, as is shown in the diary,  
8        pointed out that it was being said that if matters  
9        continued without doing anything, the mischief making  
10        of England and the United States would become more  
11        serious and an opportunity might be given to them to  
12        cooperate with French Indo-China, and China. Contrary  
13        to the prosecution's contention KIDO was not expressing  
14        his opinion on this question; he was merely reporting  
15        what others were saying.

16        XII. (c) The Tripartite Pact.

17        160. The undisputed evidence is that KIDO  
18        first learned of MATSUOKA's secret conduct of negoti-  
19        ations for the conclusion of an alliance between Japan  
20        and Germany on September 12, 1940. Even the divisional  
21        chiefs of the Foreign Office were unaware of this secret.  
22        The Prosecution makes the usual guess that KIDO knew  
23        of what was secretly going on at MATSUOKA's house  
24        prior to that date. Contrary to the prosecution's  
25        (510. Aff. par. 152, Tr. 30,907)

contention KIDO's Diary of September 14, 1940 does not  
1 say, with its inference of prior knowledge by KIDO,  
2 that TOJO informed KIDO later that evening that the  
3 Navy's objection had been withdrawn. The entry  
4 specifically shows that TOJO told KIDO that the  
5 \*\*\*\*Army and Navy had arrived at an agreement concern-  
6 ing relations with Germany and Italy." <sup>511</sup>

161. There is absolutely no evidence in  
this case that the Emperor ever disapproved of the  
government's decision after the government had made  
it and when it was submitted to the throne as a national  
policy. Prior to making a decision the Emperor may  
express his views or caution the cabinet or request  
the cabinet to reconsider its proposed attitude there-  
upon. The prosecution approaches this proposition as  
if KIDO had greater power than the Emperor. It tries  
to create the impression that KIDO was making the  
decisions. This is, of course, entirely unsupported  
by the facts. KIDO merely submitted his views to the  
Emperor and the final decisions were reached by the  
government and the High Command.

162. KIDO discussed the matter of this  
alliance with Prince KONOYF and Foreign Minister  
(511. Ex. 627, Tr. 7029 as Cor. by Lang. Sec.  
Tr. 7103 and Tr. 36,680)

MATSUOKA, KONOJI and MATSUOKA argued that the alliance  
1 was intended to prevent America from joining in the  
2 war and further that in case Japan was isolated in the  
3 Pacific without concluding such an alliance, Japan  
4 might be attacked by America at any moment. That was  
5 their standing explanation and KIDO thought that the  
6 alliance might cause an antithesis with America and  
7 eventually Japan would have to oppose Great Britain  
8 and the United States.  
9

163. As shown in his diary of September  
10 513 16, 1940 he conferred with the Emperor about the  
11 alliance with Germany. On this occasion KIDO testified  
12 that he had advised the Emperor that this alliance,  
13 if concluded, would divide the world into two parts,  
14 irrespective of the opinions of the Prime Minister and  
15 514 MATSUOKA to the contrary.

164. The prosecution's reasoning with respect  
17 to KIDO's actions at the time the Tripartite Pact was  
18 consummated is difficult to follow. It says that no  
19 entry in HARADA Memoirs is in conflict with any entry  
20 515 in KIDO's Diary. Yet it creates an extreme divergence  
21 516 of views between HARADA's Memoirs of October 20, 1940,  
22 (512. Aff. par. 153, Tr. 30,909  
23 513. Ibid.  
24 514. Ibid.  
25 515. Par. JJ-11, Tr. 41,056  
516. Ex. 3810, Tr. 37,880)

518  
September 16, 1940, and September 21, 1940.

519

1 All of these exhibits refer to the Tripartite Alliance.  
2 The HARADA entry of October 20, 1940, purports to  
3 quote word for word some conversations HARADA is  
4 supposed to have had with KIDO and KONOYE occurring  
5 about a month previous. Its accuracy is highly ques-  
6 tionable if the Tribunal accepts KIDO's Diary to be  
7 accurate as requested by the prosecution. The gist  
8 of the prosecution's contention seems to be that  
9 according to HARADA, KIDO and KONOYE persuaded (al-  
10 though the exhibit does not use this word) the Emperor  
11 to give Imperial sanction to the Tripartite Pact and  
12 that they told the Emperor that it was the only way  
13 of keeping the United States of America out of the war.  
14 Contrast this with KIDO's Diary entry of September 21,  
15 521  
16 1940 which is also a prosecution exhibit. In his  
diary KIDO said:  
17

18 "With regard to the solution of the China  
19 Incident, I expressed my opinion to His  
20 Majesty to the effect that we should have  
21 eventually to oppose both England and the  
22 United States if we concluded a military

- 23 (517. Ex. 627, par. 6, 7, 8 not read, Tr. 7029 as  
Cor. by Lang. Sec. Tr. 7103 and Tr. 38,680  
24 518. Tr. 30,907-30,908-30,909  
519. Ex. 2277, Tr. 16,250  
520. Par. JJ-3, Tr. 41,048  
25 521. Ex. 2277, Tr. 16,250)

1 alliance with Germany and Italy. We should,  
2 therefore, make necessary adjustments regard-  
3 ing our relations with China as soon as  
4 possible."

5 Clearly this shows that KIDO told the Emperor that  
6 if a military alliance with Germany and Italy was  
7 concluded, it would bring on war with both England  
8 and the United States. No amount of twisting of  
9 language can interpret that as a persuasion of the  
10 Emperor to accept the Pact.

11 165. It is quite clear that by making  
12 "\*\*\*\*necessary adjustments\*\*\*\*" 522 regarding the China  
13 Incident KIDO was talking about making concessions.  
14 What else could it have meant? The prosecution asks  
15 the Tribunal to reject KIDO's statement in his affidavit  
16 that this meant making concessions, but it does not  
17 suggest what those words "necessary adjustments"  
18 mean. 523

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24  
25 (522. Aff. par. 154, Tr. 30,910  
523. Par. JJ-54, Tr. 41,095)

166. In this Memoir of October 20, 1940,  
HARADA also expressed doubts how the then Lord Keeper  
of the Privy Seal and the Prime Minister explained the  
matter to the Throne. Prince SAIONJI was also doubtful.  
1 The very wording of this is based on an assumption that  
2 KIDO and KONOYE obtained Imperial sanction. In so far  
3 as KIDO is concerned, the evidence is to the contrary  
4 as shown in KIDO's Diary of September 21, 1940. In so  
5 far as Prince SAIONJI having been kept in ignorance,  
6 it must be remembered that KIDO, too, was kept in ig-  
7 norance by the Foreign Minister until September 12,  
8 1940. Furthermore, when cross-examined KIDO fully  
9 explained both from the legal and individual standpoint  
10 that the duty rested on the Prime Minister to inform  
11 Prince SAIONJI, and KIDO understood that the government  
12 had discussed the matter with Prince SAIONJI. This  
13 525 evidence is uncontradicted.  
14

167. It is interesting to note that the prose-  
17 cution itself does not know what HARADA is talking  
18 about when it questions his memoir of October 20, 1940,  
19 where he reports that the Emperor was told by both  
20 KONOYE and KIDO that the adoption of the Tripartite  
21 Pact was the only way to keep the United States of Amer-  
22 ica out of war. The prosecution wants to know what war  
23

524. Ex. 2277, T. 16,250

525. T. 31,572

526  
HARADA is talking about. We have no idea.

1       168. The European War and the China Incident  
2       were in progress at that time, but the prosecution  
3       rejects both of these and claims the HARADA entry re-  
4       fers to "proceedings" not "war" intended to take place  
5       in the Far East. The purpose of this guess apparently  
6       is to tie KIDO into it by referring to a prior diary  
7       527  
8       entry of September 14, 1940. This entry was twice  
9       corrected by the Language Section, and reveals that  
10      KIDO cautioned the Emperor to direct the government to  
11      be careful before taking any action. The entry clearly  
12      shows that he first told the Emperor of what had been  
13      said about the opportunity of Great Britain and the  
14      United States to cooperate with French Indo-China and  
15      China. Nowhere does it show KIDO's approval as the  
16      prosecution claims. This diary entry does not mention  
17      military action against British, Dutch and Portuguese  
18      possessions in the Far East which the prosecution says  
19      528  
20      the diary entry shows KIDO approved. After the gov-  
21      ernment had made its decision with regard to the Tri-  
22      partite Pact and KIDO had discussed the matter with the

23      526. Par. JJ-17, T. 41,060

24      527. Par. JJ-17, T. 41,061

25      528. Par. JJ-17; Diary, Ex. 527, T. 7,029, as cor.  
          by Language Section, T. 7,103 and T. 38,680;  
          T. 41,061

Emperor, the arranging of the Imperial Conference  
for its approval was merely a matter of procedure. No  
responsibility can attach to KIDO for the Pact. He  
never advocated nor voted for it.

169. In discussing KIDO and the Tripartite  
Pact, the prosecution says, "It appears that he attended  
the Privy Council meeting which finally approved the  
Pact," citing its own exhibit 643, last paragraph, T.  
7,049 (not read). We respectfully suggest that the  
prosecution's interpretation cannot be characterized  
as fair nor is it compatible with its knowledge of the  
facts.

170. The authority cited by the prosecution  
is KIDO's Diary for September 26, 1940. It says:

"I was informed that the Privy Council  
Committee which started sitting this morning  
finished finally at 7:30 p.m. after which at  
9:30 the full council was convened. On leaving  
this I went to the Palace. When I heard that the  
council had finished uneventfully at 10:20 I left  
the Palace."

171. This entry clearly shows KIDO heard  
that the council sat until 7:30 p.m., reconvened at 9:30

529. Aff. par. 153, T. 30,909; Ex. 643, T. 7,049  
530. Ex. 643, T. 7,049 as cor. by Lang. Sec. on March  
18, 1948

531. Ibid.

and finished at 10:20. Even if we were to accept the word "leaving" as correct, there could be no such interpretation as claimed by the prosecution. A casual reader would easily discern the typographical error. The word "leaving" should be "learning." The Language Section has recently corrected it. KIDO is on trial for his life.

172. Throughout this trial, many of KIDO's Diary entries were not submitted to the Language Section even though they had minor inaccuracies, because we felt they were not of sufficient importance. In several instances, however, the prosecution has endeavored to make capital of these, which we considered insignificant errors in its own exhibits of the diary. They were all duly changed by the Language Section. Since the prosecution, however, is now relying on typographical errors to convict KIDO, if there be any doubt whatsoever in the Tribunal's mind as to the translation of KIDO's Diary with respect to any particular entries already discussed, or which may be referred to in any rebuttal summation after the delivery of this summation, we suggest and have no objection to the Tribunal having the entry resubmitted to the Language Section.

532. Ibid.

XII. (d) October 1, 1940--September 1, 1941

1           173. After the conclusion of the Tripartite  
2           Pact Foreign Minister MATSUOKA determined to take up  
3           negotiations with Chungking in his own hands. At first  
4           they appeared to make fair progress but later they  
5           reached a dormant political stage. Consequently at a  
6           Liaison Conference between the government and the High  
7           Command on November 28, 1940 it was decided that a  
8           basic treaty be concluded by Ambassador ABE with Wang  
9           Ching-wei, paying no attention to the negotiations with  
10           Chungking. The result was that the China Affair en-  
11           tered a definite state of protraction.  
12

13           174. Japanese power was becoming exhausted and  
14           only pessimism existed as to the prospect for the set-  
15           tlement of the China Affair, as related in KIDO's Diary  
16           on November 29, 1940.<sup>535</sup> KIDO had a conversation with  
17           the Emperor wherein the Emperor recommended that there  
18           was no alternative but to consider Japan's moves towards  
19           Chungking with regard to the settlement of the incident  
20           as a failure. In such an event the Emperor was con-  
21           cerned as to what Japan's national policy would be as  
22           the incident would naturally drag on in the event of  
23           the final conclusion of a treaty of peace with the Wang

25 | 533. Aff. para. 159, T. 30,912

534. *Ibid.*

535. Pros. Ex. 2278 and errata, T. 16,251

Regime. KIDO told the Emperor that under the circumstances, as they then existed, the Emperor was correct in saying that the incident would be a prolonged one and that it would be difficult for Japan to defeat Chungking in view of the exhausted state of Japan's power at that time. As KIDO pointed out there was nothing else to do but to complete Japan's national strength, securing keypoints and that Japan would be unable to settle the affair by compromising with positive action proponents in Japan. Certainly this was not an opinion in favor of invasion or aggression. It viewed the situation as it existed at that time. In short, Japan was unable to make peace and KIDO was advocating maintenance of the status quo, and waiting for a future chance to settle the affair. Any criticism of KIDO's opinion is wholly unwarranted.<sup>536</sup> Any other deductions as to the meaning of these diary entries are unsupported by any evidence in the case.

175. In his affidavit KIDO sets forth a conversation he had with the Emperor as revealed by his diary entry of December 3, 1940.<sup>537</sup> The Emperor was concerned about Japanese-Soviet relations. As shown in the diary KIDO pointed out that the U.S.S.R. was in the most favorable position in the world at that time, and

536. Par. JJ-56, T. 41,098

537. Aff. Par. 161, T. 30,914-15

1 it was possible that she would not readily concede to  
2 negotiate with Japan. KIDO pointed out to the Emperor  
3 that,

4 "After the present war there is little  
5 doubt that the only uninjured countries will  
6 be the U.S.S.R. and the United States, while  
7 others would be exhausted. Then, Japan will be  
8 placed between the two powers and subjected to  
9 extremely enduring hardship."

10 He also told the Emperor,

11 ". . . provided that we are prepared  
12 for ten years of hardship and cultivate morale  
13 based on simplicity and virility, I believe it  
14 is not so difficult to emerge favorably in the  
15 end."

16 These are, indeed, strange words for a man accused as  
17 KIDO is of being an aggressor at heart. Can anyone  
18 seriously contend in the face of this that KIDO was  
19 conspiring as charged in the Indictment to dominate  
20 the world by the use of aggression. It is equally  
21 strange that the prosecution did not cross-examine  
22 KIDO on this, nor does it mention it in its summation.  
23 Apparently no twisting of these words could fit in with  
24 the prosecution's theory of KIDO's case.

176. In his testimony, which was unchallenged  
and uncontradicted, KIDO pointed out that in January  
1941 the Germans were adding to their military achieve-  
ments which had far-reaching effects on various quarters  
of Asia, particularly on French Indo-China whose mother-  
land had collapsed, and also on Thailand which had  
heretofore been under British influence. He pointed  
out that in Japan discussions were had as to the pro-  
priety or otherwise of Japan marching to the South  
and taking advantage of the great upheaval. Various  
plans were formulated by the Army for that purpose.  
Japan mediated in a border dispute.

177. An outline of operations on French  
Indo-China and Thailand was adopted for the purpose  
of establishing leadership positions in the South and  
having access to raw materials on the one hand, and on  
the other hand bringing pressure to bear upon China  
from the South, so as to settle that affair. It was  
natural that Japan could not look on the worldwide up-  
heaval with folded arms, there being no objection to  
having access to oil, rubber and iron resources on the  
part of Japan who was lacking in them, but moves for

538. Aff. par. 162, T. 30,915,30,916, 30,917

539. Aff. par. 162, T. 30,915

540. Ibid.

541. Ibid.

542. Ibid.

those purposes must be taken through peaceful channels  
and resort to armed force and impatience should be  
strictly guarded against. KIDO directed the attention  
of Prince KONOYE to that point and the Emperor was soli-  
itous about it. The diary entry of January 24, 1941  
confirms KIDO's statement that when the Chiefs of Staff  
of the Army and Navy reported to the Emperor on the  
military agreement with Thailand the Emperor expressed  
his fear that it might stimulate Great Britain and  
the United States.

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Aff. par. 162, T. 30,916

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Aff. par. 162, T. 30,917

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Duda & Spratt

11           179. The Chiefs of Staff and the Premier  
12 reported to the Emperor on measures to be taken  
13 toward French Indo-China and Thailand. These are  
14 recorded in KIDO's Diary of February 1, 1941, and  
15                                 547  
16 his diaries of February 3, 1941.                 The prosecu-  
17 tion claims that neither the paragraph 163 of his  
18 affidavit which sets forth his diary of February 3,  
19 1941 nor in his diary of February 1, 1941, does  
20 KIDO oppose the intended action regarding Camranh  
21 Bay and air bases near Saigon. On the contrary in  
22 the diary of February 3, 1941 KIDO stated that he was  
23 overawed at His Majesty's concern over those reports

54.5..Par. JJ-58, T. 41099.

546. Aff. par. 162, T. 30917.

547. Pros. Exh. 1303, T. 11743.

548. Aff. par. 163, T. 30918-30919.

of the Chiefs of the General Staff and in his affidavit he stated, "I regret that the Emperor's advice was not embodied in the measures taken by the government." The Emperor had given half-hearted approval to this policy. The policy already had been made by Chiefs of the General Staff and Premier, which is the final and definite decision in the Japanese governmental system.

180. In April, 1941 Foreign Minister MATSUOKA on his way home from visiting Germany and Italy concluded a neutrality pact with Premier Stalin at Moscow. On April 18, 1941 a telegram was received from Ambassador NOMURA asking for instructions on a draft plan of an understanding between the United States and Japan which had been evolved as a result of negotiations with Secretary of State Cordell Hull and President Roosevelt. MATSUOKA was on his way to Tokyo, and KONOYE, being delighted with the proposed negotiations with the United States, requested MATSUOKA to hurry home. The China Affair at that time was stalemated and as KIDO stated Japan's policy regarding the Co-Prosperity Sphere in East Asia should be properly 549. Aff. par. 166, T. 30922.  
550. Ibid.

conveyed to the United States so as to avoid mis-  
understanding.

181. The issue of the southern colonies such as Malaya, Java, Sumatra, and French Indo-China, and its effect upon Japan's existence were regarded as matter of grave national concern. The positivists were advocating that Japan should immediately secure those areas in the South even by force. KIDO and KONOYE had discussed the matter and KIDO had also discussed it with the Emperor, as shown in his diary of April 19, 1941. The prosecution's observation that negotiations with the United States were kept within such narrow limits that it is difficult to see how anyone on the Japanese side could have had any belief in their success from the beginning is apparently made in total disregard of all the evidence produced in this trial on those negotiations.

18        182. On April 3, 1941, KIDO was consulted  
by KONOYE about the appointment of SUZUKI as President  
of the Planning Board and concurrent Minister of State.  
554.

Aff. par. 163, T. 30918.  
Ex. 1065, T. 9875 as gen.

552. Ex. 1065, T. 9875 as Cor. by Lang. Soc. T. 10661

Par. JJ-60, T. 41100.  
Ex. 1058

1950, 1. 9850.

1 This was in accordance with KIDO's duties to pass on  
2 the character and rectitude of high officials such as  
3 Cabinet Ministers, who were appointed by the Emperor  
4 upon the recommendation of the Premier, so that there  
5 would be no subsequent reflection on the Emperor.<sup>554a.</sup>  
6 The prosecution's implication is not warranted.<sup>555.</sup>

7       183. On April 28, 1941 the Premier, the  
8 Foreign Minister and the Lord Keeper were ill simul-  
9 taneously. KIDO's Chief Secretary, MATSUDAIRA, came  
10 to see KIDO, stating that the Emperor wanted to know  
11 to what official His Majesty should turn for advice  
12 on diplomatic questions in such a situation, and the  
13 Emperor also requested information about the progress  
14 of the deliberations on the United States of America  
15 negotiations. The above is set forth in KIDO's Diary  
16 of April 28, 1941.<sup>556.</sup> As is also shown in the diary,  
17 KIDO said he expressed his opinions about these ques-  
18 tions and asked Chief Secretary MATSUDAIRA to submit  
19 them to the throne. KIDO set forth in his affidavit  
20 what those opinions were. He said he told MATSU-  
21 DAIRA that the Lord Keeper of the Privy Seal had no  
22 <sup>557</sup>  
23 554a. Aff. par. 165, T. 30921.  
24 555. Par. G-64, T. 39594.  
25 556. Ex. 1066, T. 9876.  
26 557. Aff. par. 168, T. 30925.

authority concerning diplomatic matters but to convey  
1 Imperial questions to the Premier and the Foreign  
2 Minister, nor had he any authority to answer about  
3 a diplomatic problem on his own responsibility. He  
4 also stated that his Chief Secretary should advise the  
5 Emperor that in the event of such simultaneous illnesses  
6 the Imperial inquiry should be conveyed by the Grand  
7 Chamberlain to the Premier or to the Foreign Minister.  
8 with respect to the negotiations toward America, KIDO  
9 submitted to the Emperor, through his Chief Secretary,  
10 his views on the basis of what he had heard from  
11 Prime Minister KONOYE and others about the developments  
12 of the situation which were to the effect that KONOYE  
13 was anxious to push the negotiations though there was  
14 some difficulty so far as Foreign Minister MATSUOKA was  
15 concerned. The prosecution does not dispute the truth  
16 of the facts contained in KIDO's advice to the Emperor.  
17 It does, however, roundly criticise KIDO<sup>558.</sup> for not  
18 calling Chief Secretary MATSUDAIRA to the stand to  
19 corroborate KIDO's assertion that "the Lord Keeper had  
20 no authority concerning diplomatic matters but to convey  
21 Imperial questions to the Premier and Foreign Minister,  
22 nor to answer about a diplomatic problem on his own  
23 responsibility" and comments on the fact that  
24  
25 558. Par. JJ-61, T. 41101.

MATSUDAIRA's affidavit was one of those which was served and withdrawn. It does not suggest that MATSUDAIRA should have been called to testify to the truth or falsity of whether or not KIDO told him that. It wanted to cross-examine him on whether the fact stated regarding KIDO's authority was correct. As can be seen, the question involved the constitutional interpretation of the Lord Keeper's duties. Two witnesses were called on behalf of KIDO with respect to this matter. The affidavit of Count MAKINO, former Lord Keeper of the Privy Seal, covering this precise question on the constitutional duties of the Lord Keeper of the Privy Seal, was offered in evidence. In objecting to it, the prosecution stated, "The affidavit consists of a dissertation by him on the legal and constitutional position of the Lord Keeper of the Privy Seal." <sup>559.</sup> Objection to the entire affidavit was sustained. <sup>560.</sup> If KIDO had misstated his authority, the prosecution could certainly have offered no objection to the affidavit and cross-examined MAKINO about this matter. The second witness called on this point was SAKUDA, Kotaro. Objections were made to his affidavit by the prosecution, particularly to paragraph 559. T. 31616.  
560. T. 31623.

4, when the prosecution said: "Paragraph 4, until you  
1 get to the last four lines on page 6, is a dissertation  
2 of the witness's opinion about the working of the  
3 Constitution, particularly with regard to advice given  
4 by the Minister of State to the Emperor and by the  
5 Lord Keeper to the Emperor and the method of choosing  
6 a new Premier, as to which again the Tribunal has all  
7 the facts and is in a much better position to form an  
8 opinion than the witness." Strenuous argument was  
9 561 made by counsel in an endeavor to have this portion  
10 of the affidavit admitted. SAKUDA, of unquestionable  
11 qualifications from his long association with the  
12 562 Japanese Government, was not offering an opinion  
13 but was stating the facts and explaining the duties  
14 of the Lord Keeper of the Privy Seal. Here again  
15 563. the objection to this paragraph was sustained. Here  
16 again, if the prosecution had any reason to disbelieve  
17 KIDO's statement, why didn't it permit SAKUDA's testi-  
18 mony to go in evidence and then cross-examine SAKUDA?  
19 The prosecution, however, states that the Tribunal had  
20 expressly ruled that evidence of precisely this type  
21 would be admitted if available, citing the President's  
22 561. T. 31628.  
23 562. T. 31622.  
24 563. T. 31631.

observation made on SAKADA's affidavit. The prosecution is in error. The Tribunal was referring to statements of witnesses corroborating what the accused said, and had nothing to do with the question of interpretation of the authority of the Lord Keeper of the Privy Seal.

184. In the general Pacific phase the prosecution states that there was a disruption among the conspirators and as a result KONOYE, HIRANUMA and KIDO held MATSUOKA in check and claims that KIDO and the other two were promoters of the southward advance policy, and refers to the entry of KIDO's Diary of June 21, 1941,<sup>564</sup> and June 22, 1941<sup>565</sup>. KIDO's Diary does not support such a conclusion. Foreign Minister MATSUOKA, who was the "problem" Minister of the KONOYE Cabinet, had changed his attitude considerably upon his return from his trip to Europe, and ignored Premier KONOYE.<sup>566</sup> Premier KONOYE was greatly concerned over this attitude on the part of the Foreign Minister and also told KIDO about his painful position as is recorded in KIDO's Diary.<sup>567</sup>

564. Par. G-80, T. 39616-39,617; Par. G-81, T. 39618.  
565. Ex. 781, T. 7910.  
566. Ex. 1093 as Cor. by Lang. Sec. T. 10664.  
567. Aff. par. 148, T. 30904; Aff. par. 169-179, T. 30925-30936.

1 Diary of June 20, 1941,<sup>568</sup> June 21, 1941,<sup>569</sup> July 2,  
2                   <sup>570</sup>                   <sup>571</sup>. In view of the  
3 eminence of the German-Soviet War, Prince KONOYE called  
4 on KIDO on June 20, 1941 and told him about MATSUOKA's  
5 attitude which he could not understand and referring to  
6 the resignation of the HIRANUMA Cabinet as a similar  
7 instance, stated that he wished to resign if a war  
8 should break out between Germany and the Soviet. At  
9 that time KONOYE was enthusiastic in making special  
10 efforts to conclude Japan's diplomatic negotiations with  
11 the United States, and KIDO did not believe that he  
12 should resign and told him that prior to his resigna-  
13 tion he should talk frankly to MATSUOKA and try to  
14 persuade MATSUOKA into acceptance of KONOYE's adminis-  
15 trative policy.<sup>572</sup> A resignation at this time might  
16 have forced the incoming Cabinet into still greater  
17 pressure by the militarists. KIDO also suggested that  
18 KONOYE should talk over the matter with HIRANUMA,  
19 Minister of Home Affairs, as shown in his diary of  
20                   <sup>573</sup>.  
21 June 20, 1941.

22                 185. As a result a conference was held on

23                 <sup>568.</sup> Ex. 1090, T. 10000 as Cor. by Lang. Sec., T. 10664.

24                 <sup>569.</sup> Ex. 781, T. 7910.

25                 <sup>570.</sup> Ex. 1108, T. 10144.

<sup>571.</sup> Ex. 1115, T. 10162 as Cor. by Lang. Sec. T. 10666.

<sup>572.</sup> Aff. par. 171, T. 30927.

<sup>573.</sup> Ex. 1090, T. 10000, as cor. by Lang. Sec., T. 10664.

the next day which KONOYE, KIDO and HIRANUMA attended.  
1  
The reason why HIRANUMA was present was because of  
2  
KONOYE's reference to the reasons for the resignation  
3  
of the HIRANUMA Cabinet as a similar instance and  
4  
wanted to hear from him how the situation stood at  
5  
that time. As shown in KIDO's diary for June 21,  
6  
574  
7  
1941, the discussion was based on KIDO's opinion  
8  
575  
to KONOYE of the previous day. KIDO pointed out  
9  
that the circumstances were entirely different from  
10  
those which led to the resignation of the HIRANUMA  
11  
Cabinet in that in the event of a German-Soviet war  
12  
it would rather be necessary to give reconsideration  
13  
to the Tripartite Alliance and that for that purpose  
14  
it would be inevitable that the Foreign Minister  
15  
MATSUOKA leave the Cabinet, as it would not be advisable  
16  
for the cabinet to resign en bloc. As further shown  
17  
in the diary entry KIDO stated that KONOYE should  
18  
assume leadership.  
19

20  
186. Just as had been feared, the German-  
21  
Soviet war broke out on the 22nd. The conduct of  
22  
foreign affairs in the midst of such a complicated  
23  
situation was a delicate and difficult question for  
24  
576.  
Japan. As was to be expected, MATSUOKA began to  
25

574. Ex. 781, T. 7910.

575. Ex. 781, T. 7910.

576. Aff. Par. 173, T. 30929.

advocate, over Prince KONOYE's head, a military expedition to Siberia which met with disapproval by the Cabinet Ministers as well as KONOYE. It is because of this consideration that KIDO told the Emperor, as is recorded in his diary of June 22,  
<sup>577</sup> 1941, that His Majesty should impress upon MATSUOKA his desire to have the matters handled through the Premier and also impress upon MATSUOKA the importance of careful consultation with the Premier. A careful reading of KIDO's Diary will definitely establish that KIDO, in his statement to the Emperor, said nothing which might produce an effect on the Emperor's views concerning the government's policy. That would have been interference by KIDO with the cabinet. He merely expressed his wish that as Emperor he would show an attitude of attaching due importance to the Premier and checking the too forward act which might be harmful to the unity of the cabinet. This is an outstanding instance of the scrupulous care with which KIDO, as Lord Keeper of the Privy Seal, exercised in strictly observing the distinction between the Imperial Court and the Government so as not to encroach upon the proper functions of  
<sup>577.</sup> Ex.-1093; T. 10664.

the government. As KIDO has explained,<sup>578.</sup> in case  
1 the explanation of the government or the Supreme  
2 Command regarding any policy was deemed considerably  
3 well grounded, the Lord Keeper used to tell the  
4 Emperor to approve it. In such a case, however, the  
5 Lord Keeper was always strictly cautious if he was  
6 asked and gave his own personal opinion.  
7

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25 578. Aff. par. 151, T. 30906.

187. The next day, June 23, 1941, as shown  
1                         579  
in KIDO's Diary KIDO had an audience with the Emperor  
2 in the morning. He reported to him the conversation  
3 of Prince KONOYE with MATSUOKA. In that entry of his  
4 diary KIDO mentions the fact that he had a talk with  
5 Prince KONOYE from 2:40 p.m. to 4:00 p.m., "\* \* \* ex-  
6 changing frank opinions on the changed situation  
7 caused by Germany's war against Soviet Russia." The  
8 prosecution complains because KIDO did not set out in  
9 his diary this conversation and intimates that there  
10 was no trace of it. As shown the entry does show he  
11 had such a conversation. However, the prosecution did  
12 not cross-examine KIDO on this conversation. It is  
13 uncontradicted. As KIDO testified on direct KONOYE  
14                         580  
15 asked KIDO his opinion. KIDO stated that Germany by  
16 waging a war against the Soviet Union had violated the  
17 principle that it was necessary for both states to  
18 make strides in adjusting diplomatic relations with  
19 the Soviet Union. On this principle Germany agreed  
20 at the time when the alliance between Germany and Japan  
21 was concluded. In other words, Germany's waging a  
22 war against Russia had changed one of the elements upon  
23 which the alliance was formed. Therefore, the Prime  
24  
25 579. Tr. 10,024.  
580. Aff. par. 175, Tr. 30,931.

1 Minister should consider most carefully as to  
2 whether the alliance should be continued any longer.  
3 Prince KONOYE agreed with KIDO on that point and  
4 agreed that he would examine the matter. KIDO sub-  
5 sequently heard that KONOYE had expressed to MATSUOKA  
6 his desire for reconsideration of the alliance, but  
7 MATSUOKA did not take it seriously and only made  
8 a protest by telegram to the German Foreign Minister. <sup>581</sup>  
9 There is no foundation for the prosecution's claim  
10 that this advice conflicts with his diary entry of  
11 <sup>582</sup> June 21, 1941, or with the advice he gave the  
12 <sup>583</sup> Emperor on July 31, 1941.

13 <sup>584</sup> 188. The prosecution points to diary entries  
14 <sup>585</sup> <sup>586</sup> <sup>587</sup> of June 18, 1941, June 25, 1941, and July 5, 1941  
15 in support of its contention that they show no record  
16 of KIDO's disapproval or of advice to the Emperor  
17 to stop the advance into southern French Indo-China.  
18 The prosecution must know, although it did not include  
19 it in its excerpt of June 18, 1941, that KIDO did  
20 speak to the Emperor on that day. The prosecution

21 581. Aff. par. 175, Tr. 30,931.  
22 582. Pros. ex. 781, Tr. 7910.  
23 583. Tr. 30,933.  
24 584. Par. JJ-63, Tr. 41,102.  
25 585. Ex. 1089, Tr. 9998.  
586. Ex. 1095, Tr. 10,026.  
587. Ex. 1112, Tr. 10,156 as Cor. by Lang. Sec.  
Tr. 10,666.

1 also overlooks the fact that KIDO's diary shows that  
2 he did discuss this matter with the Emperor on  
3 June 22, 1941, <sup>588</sup> June 23, 1941, <sup>589</sup> and July 2, 1941. <sup>590</sup>

4 189. There is no necessity for amazement  
5 on the part of the prosecution that KIDO did not know  
6 until he read KONOYE's memoirs that the decision of  
7 the Imperial Conference of July 2, 1941 " \* \* \* con-  
8 templated an advance to French Indo-China and was to  
9 be carried on even if it meant recourse to war  
10 against the United States of America and Britain."

11 As explained by KIDO, <sup>591</sup> he was advised that the dis-  
12 cussions at the liaison conference had centered pri-  
13 marily around MATSUOKA's idea of proceeding north  
14 against Russia. Of secondary importance was the pub-  
15 lic discussion of the necessity of Japan advancing  
16 southward to obtain materials and necessities. As  
17 shown in his diary of July 2, 1941, <sup>592</sup> it was the  
18 Emperor who told KIDO about the progress of the  
19 Imperial conference. The prosecution, however,  
20 argues that he knew the details of the September 6,  
21 1941, conference as appears from prosecution

22 588. Ex. 1093, Tr. 10,021 as Cor. by Lang. Sec.  
23 Tr. 10,664.

24 589. Ex. 1094, Tr. 10,024.

25 590. Ex. 1108, Tr. 10,144.

591. Aff. par. 177, Tr. 30,933.

592. Ex. 1108, Tr. 10,144.

exhibit 2250, tr. 16,198, which is a historical document KIDO wrote in November 1941. Naturally in order to record the events properly, and as the decision of the September 6 Conference was most important, because it was the "cancer" existing at that time, he ascertained the exact facts in detail. Here again KIDO was not cross-examined on any of these matters.

The prosecution submits its own conclusions unsupported by facts.

190. It is significant that the prosecution, in its individual summation against KIDO, omits all reference to KIDO's affidavit and diary entries with respect to KIDO's opinion that MATSUOKA should resign because he was proving a stumbling block in KONOYE's attempts to complete peace negotiations with America, as set forth in KIDO's diary of July 15, 1941,  
593  
July 16, 1941, and July 17, 1941.  
594  
595  
MATSUOKA's  
attitude is confirmed in Prince KONOYE's memoirs, 596  
wherein KONOYE records, "However, in spite of my efforts, Foreign Minister MATSUOKA's attitude became increasingly uncooperative. It became clear that his attitude was one of opposition to the Japanese-

593. Ex. 1115, as Cor. by Lang. Sec. Tr. 10,666.  
594. Ex. 1116, as Cor. by Lang. Sec. Tr. 10,667.  
595. Ex. 1117, as Cor. by Lang. Sec. Tr. 11,138;  
Aff. paras. 179, 180, 181, 182, Tr. 30,934-  
30,939.

596. Ex. 2866, Tr. 25,747.

American negotiations." KONOYE also records, with  
1 respect to the collapse of his cabinet at that time,  
2 "The previous cabinet had done its utmost for the  
3 success of the Japanese-American negotiations. \* \* \*  
4 The opposition of the Foreign Minister alone had  
5 caused the cabinet's collapse."<sup>597</sup> This is also con-  
6 firmed by TOMITA's testimony and the prosecution did  
7 not cross-examine him.<sup>598</sup>

191. The KONOYE cabinet resigned and the  
only principal change of the new KONOYE cabinet was  
that Foreign Minister MATSUOKA was replaced by Foreign  
Minister TOYODA which was for the purpose of facili-  
tating negotiations with America.<sup>599</sup> Ambassador Craigie  
reported on the change in policy after MATSUOKA's  
departure as Foreign Minister as follows:<sup>600</sup>

"With his departure, a very considerable --  
brief notable (?but) a radical -- change has occurred  
in the political situation here, and there exists a  
more real prospect than at that time of setting in  
motion a steady swing away from the Axis and towards  
more moderate policies."

Apparently by failing to mention in its

597. Ex. 2866, Tr. 25,748.

598. Tr. 33,298.

599. Par. 182, Tr. 30,939.

600. Ex. 2908, Tr. 25,849.

individual summation KIDO's participation in the exodus  
1 of MATSUOKA, the prosecution realized KIDO was exerting  
2 efforts for peaceful purposes and that they did not  
3 represent the acts of a criminal.

4           92. The prosecution reverses its position  
5 and asks the Tribunal to accept what KIDO wrote in his  
6                 601 affidavit regarding a conversation KIDO had with  
7                 602 Prince KONOYE on August 2, 1941, explaining his diary  
8                 603 entry of that date. The prosecution seems to think  
9           that KIDO should be convicted because he does not  
10           state in every excerpt of his diary that he was  
11           objecting to war with the United States. KIDO was a  
12           historian recording the facts as they occurred. As  
13           his diary of August 2, 1941, clearly shows, in a  
14           conversation he had with KONOYE the question on hand  
15           was that there was a certain element in the navy which  
16           was gathering strength which might lead to political  
17           difficulties and cause anxiety in the maintenance of  
18           harmony between the Supreme Command and the government.  
19           They also discussed the fact that because of the  
20           embargoes Japan's oil would not last two years, which  
21           would result in an acute national crisis and that a

24           601. Par. JJ-64, Tr. 41,103-41,104.  
25           602. Aff. par. 185, Tr. 30,943-30,944.  
            603. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.  
            Tr. 10,667.

1 thorough discussion should be had between the War and  
2 Navy Ministers concerning the fundamental national  
3 policy and if a complete agreement was not reached,  
4 the cabinet would have to resign and the army and  
5 navy would then assume charge of the administration  
6 of the country. From this it is quite apparent, as  
7 explained by KIDO, that there was some talk of going  
8 to war with America at that time, and it is clear  
9 that the use of the word "now" as referred to by  
10 KIDO in his explanation was merely in reference to  
11 the fact that there was an element in the navy which  
12 was considering a decision to go to war with America  
13 604  
14 at that time. If this diary of August 2, 1941, is  
15 read in conjunction with KIDO's diary of August 7,  
16 605  
17 1941, KIDO's opinion on this entire matter will be  
18 clearly discerned. As he stated in his diary of  
19 August 7, 1941, if the situation with respect to the  
20 oil were true, "We must reach the conclusion that  
21 our war with the United States of America would be  
22 a hopeless one." Does that sound like the opinion  
23 of a man conspiring to wage aggressive war? Emphati-  
24 cally no. It definitely establishes that KIDO was  
25 604. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.  
Tr. 10,667.  
605. Ex. 1130, Tr. 10,199 as Cor. by Lang. Sec.  
Tr. 10,667.

suggesting to KONOYE he should avert war with America by diplomatic negotiations on the ground that if Japan was to go to war with America the blockade of oil would be fatal to Japan.

193. He then points out that if an attack was made on the Dutch East Indies and Singapore and the Philippine Islands, they would still not be able to get oil and Japan would be defeated. In paragraph 11 KIDO said;

"11. We could not do what we wanted on account of the lack of our national power. Although the situation was different in its external appearance, we might be compelled to make the same decision as we did in the case of the Three-Power Interference after 606 the Sino-Japanese War."

The prosecution, without any evidence to support it, interprets this clause as meaning that what Japan actually did was to submit for the time being and wait for better opportunities to enforce her will upon China which came in 1915, 1931, and 1937. This, of course, is not the decision KIDO refers to. May we take the liberty and advise the Tribunal that KIDO was referring to the decision which was made after the peace conference when Japan as a result of 606. Ex. 1130, Tr. 10,200, as Cor. by Lang. Sec. 10,667.

1 the Three-Power interference returned the Liaotung  
2 Peninsula to China. (If the prosecution thought this  
3 was important, it could have asked KIDO.) The balance  
4 of the entry shows that KIDO advocated that the  
5 Japanese should do everything in their power to restore  
6 friendly relations between the United States of  
7 America and Japan which, as is well known, were very  
8 critical at that time.

9 194. The evidence is that KIDO knew that  
10 Japan was being pressed economically but he felt and  
11 told KONOYE that Japan should resolve to toil through  
12 ten years of hard struggle. He pointed out the need  
13 for materials and Japan's hopes in the southern  
14 regions. The evidence is that he had no thought in  
15 mind of obtaining those materials other than by  
16 peaceful means. KIDO testified that he fully  
17 realized in his talk with KONOYE that if Japan suc-  
18 ceeded in warding off a war with America and the  
19 present European war came to an end, the desire for  
20 peace would not be impossible to be created after the  
21 war and that, therefore, it might be possible to get  
22 politics to follow their proper course until that  
23 607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.  
24 608. Aff. par. 187, Tr. 30,946-30,947.

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2 Peninsula to China. (If the prosecution thought this  
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12    607  
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17    608  
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21 present European war came to an end, the desire for  
22 peace would not be impossible to be created after the  
23 war and that, therefore, it might be possible to get  
24 politics to follow their proper course until that

25       607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.  
608. Aff. par. 187, Tr. 30,946-30,947.

time through making redoubled efforts to reconstruct politics and to check the military. His views were expressed to KONOYE for the purpose of having KONOYE convince the militarists of the hopelessness of war with America.

609  
195. If the guilt or innocence of KIDO depends upon the prosecution's interpretation of KIDO's diary, we ask as a sample that the Tribunal examine KIDO's diary and his interpretation of the diary entry outlined above. Then compare the prosecution's interpretation of this diary today with its interpretation of the same entry on January 30, 1947. Today the prosecution gives its interpretation of that diary entry and says in conclusion:

610  
196 "We submit that this is the advice of a man who fully shares the aims of the militarists but not their confidence in immediate success; for success 611  
197 he is prepared to wait ten years."

198 On January 30, 1947, in referring to this  
199 same diary entry, the prosecution concluded:

200 "No doubt if his advice had been taken we  
201 should not be holding this trial today; and if he had

202 609. Aff. par. 187, Tr. 30,947.  
203 610. Pros. doc. 0003, Tr. 16,852.

204 611. Par. JJ-65, Tr. 41,105.

resigned when it was rejected we might not have included him except with regard to China."

We ask that the Tribunal read this diary entry and accept KIDO's clearcut explanation thereof.<sup>613</sup> Here again, if there was any doubt as to what KIDO meant, cross-examination of him on this entry would have been of assistance to the Tribunal. Apparently, on January 30, 1947, the prosecution took the view that this diary entry of August 7, 1941, shows that KIDO could not be held criminally liable for the Pacific war but today the prosecution evidently has changed its view. (It cites no additional testimony to support its changed view. It still confines its opinion to the same diary entry.) Is the judgment of this Tribunal on this particular point to be based on either of the prosecution's interpretations of the diary or on KIDO's uncontested explanation thereof? If the prosecution's interpretation is to be taken, which one, the one of January 30, 1947, or today's? Even if for the sake of argument we were to accept prosecution's conclusions that KIDO favored the aims of the militarists but that he was prepared to wait for ten years, this still is not a crime under the

<sup>612.</sup> Pros. doc. Q003, Tr. 16,852.

<sup>613.</sup> Aff. par. 187, Tr. 30,946-30,947.

Charter or the Indictment. There is no charge in  
1 the Indictment for a war to occur ten years from now  
2 nor is it part of any conspiracy for two reasons.  
3 In the first place, he is not being charged for any  
4 conspiracy to commence a war ten years from now, and  
5 secondly there is no evidence that anyone agreed or  
6 conspired with him to do so. He stood alone on this.  
7 Apparently realizing this, the prosecution attempts  
8 to drag him back into the conspiracy counts by  
9 stating, "His doubts are clearly based on those of  
10 NAGANO a week earlier. Later when NAGANO changed  
11 614  
12 his view KIDO fell in with the rest." The prosecu-  
13 tion cites no evidence supporting the last amazing  
14 sentence.  
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With respect to the first sentence, the prosecution merely cites an exhibit without explanation. That exhibit is KIDO's Diary of July 31, 1941, wherein KIDO sets forth the conversation he had with the Emperor. The Emperor told KIDO that Admiral NAGANO had made a report to the Emperor stating that in the Navy's opinion war should be averted as much as possible; that NAGANO opposed the Tri-Partite Alliance and so long as it existed, the adjustment of Japanese-American diplomatic relations would be impossible and if they were impossible and oil was cut off and war broke out with America, the oil would only be sufficient for one and one-half years. When the Emperor asked NAGANO if it would be possible to win a sweeping victory, NAGANO replied: "\*\*\*\*it was even doubtful whether or not we would ever win, to say nothing of a great victory as in the Russo-Japanese War." KIDO said in his diary:

"I was filled with trepidation by the Imperial anxiety about the danger of having to wage a desperate war."

It further shows KIDO's answer to the Emperor was that NAGANO's opinion was too simple. KIDO told the Emperor that he was doubtful whether Japan could

615. Ex. 1125, T. 10,186 as Cor. By Lang. Sec., t. 10,667.

have the confidence of the United States if she  
1 annulled the Tri-Partite Pact or whether she would  
2 be held in contempt if she annulled it. The diary  
3 also shows he further advised the Emperor:

4 "There are several means to be tried regarding  
5 the relationship between America and Japan. We must  
6 deliberate patiently on the matter in a constructive  
7 manner. I would urge the Premier's careful consideration  
8 on this point."

9 Are these the words of a criminal,<sup>616</sup> a  
10 murderer,<sup>617</sup> a gangster,<sup>618</sup> an aggressor at heart?<sup>619</sup>  
11 From the foregoing it is apparent that KIDO had no  
12 doubt that war with the United States could never  
13 succeed. It also shows that he was opposed to it and  
14 advocated constructive deliberation. There is no  
15 evidence nor does the prosecution cite any evidence  
16 showing that he ever, "fell in with the rest." On  
17 the contrary as will be shown, he continued to hold  
18 to his views in opposition to the rest.

20 XII. (e) The End of the Third KONOYE  
21 Cabinet, September 1, 1941 - October 15, 1941

22 196. When KONOYE went to the Palace on

23 24 616. Indictment.

25 617. Indictment.

618. T. 31,544.

619. T. 16,852.

September 5, 1941 to submit the agenda for the proposed  
1 Imperial Conference he showed it to KIDO and it  
2 consisted of three points. 1. War preparations be  
3 made against America and Britain. 2. In parallel,  
4 the negotiation with America be pushed very hard.  
5 3. In case no prospect of an amicable conclusion  
6 of the negotiation with America came in sight by the  
7 first ten days of October, Japan make up her mind to  
8 wage war with America and Britain. <sup>621</sup> This was the  
9 first time KONOYE had made any reference to the  
10 question which was now abruptly presented to KIDO.  
11 KIDO told KONOYE such a serious plan should not be  
12 presented to the Emperor so suddenly as it would  
13 embarrass the Emperor because he would not have time  
14 to think it over. He also told KONOYE it was dangerous  
15 to fix a time limit and asked if it was not possible  
16 to modify even this point alone, and if the plan was  
17 not abandoned it might lead to war. KONOYE told him  
18 that it had already been decided at the Liaison  
19 Conference between the Government and the High Command  
20 and it was therefore difficult to either modify or  
21 give up the plan. KONOYE added that there was no  
22 alternative left for him but to devote his efforts to  
23 bringing the negotiations to an amicable conclusion. <sup>622</sup>

621. Aff. par. 190, T. 30,948-30,949.

622. Aff. par. 190, T. 30,949.

submitted the agenda to  
 His Majesty put various strategical questions  
 to him to which KONOYE found it impossible to reply  
 and asked the Emperor to summon the Chiefs of Staff  
 of the Army and Navy. Thereafter KIDO was received  
 in audience and told the Emperor to follow the Premier's  
 advice of summoning the Chiefs of Staff which he did  
 and KIDO requested the Aide de Camp to call the Chief  
 of the General Staff, the Chief of the Naval General  
 Staff and the Premier to the Palace.

198. After the audience which Prince KONOYE  
 had with the Emperor, KONOYE  
 told KIDO that the Emperor asked Marshal SUGIYAMA  
 when the southern campaign would be terminated and  
 he replied in a short period of time. The Emperor  
 reprimanded him reminding him that he had said a  
 similar thing at the outbreak of the China Incident.  
 Fleet Admiral NAGANO also told the Emperor that if  
 things went on as they were Japan would lose but there  
 would be a hope of recovery if a drastic operation is  
 undergone and that is war. KONOYE said that the  
 Emperor asked why diplomatic negotiations were not  
 placed first to which KONOYE replied that the planning

623. Aff. par. 191, T. 30,950; Ex. 1134, T. 10,215 as  
 Cor. Lang. Sec., T. 10,668; Ibid.  
 624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;

It  
 for  
 retirement  
 called  
 at 7 p.m."  
 here is no  
 with KONOYE

19 trae  
 20 before KONOYE. 628 M. the Premier  
 21 same exhibit reciev. to the Throne  
 22 proceeded to the Palace and sub.  
 23 625. Aff. par. 192, T. 30,952.  
 24 626. Par. JJ-66, T. 41,106.  
 25 627. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,  
 and additional excerpt in KIDO's affidavit Par.  
 199, T. 30,951.  
 628. Ibid.

197. When KONOYE submitted the agenda to  
1 the Throne His Majesty put various strategical questions  
2 to him to which KONOYE found it impossible to reply  
3 and asked the Emperor to summon the Chiefs of Staff  
4 of the Army and Navy. Thereafter KIDO was received  
5 in audience and told the Emperor to follow the Premier's  
6 advice of summoning the Chiefs of Staff which he did  
7 and KIDO requested the Aide de Camp to call the Chief  
8 of the General Staff, the Chief of the Naval General  
9 Staff and the Premier to the Palace.  
10

11 198. After the audience which Prince KONOYE  
12 and the Chiefs of Staff had with the Emperor, KONOYE  
13 told KIDO that the Emperor asked Marshal SUGIYAMA  
14 when the southern campaign would be terminated and  
15 he replied in a short period of time. The Emperor  
16 reprimanded him reminding him that he had said a  
17 similar thing at the outbreak of the China Incident.  
18 Fleet Admiral NAGANO also told the Emperor that if  
19 things went on as they were Japan would lose but there  
20 would be a hope of recovery if a drastic operation is  
21 undergone and that is war. KONOYE said that the  
22 Emperor asked why diplomatic negotiations were not  
23 placed first to which KONOYE replied that the planning  
24 623. Aff. par. 191, T. 30,950, Ex. 1134, T. 10,215 as  
624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;  
Ibid.

1 was aimed at attaching primary importance to diplomatic  
2 negotiations and requested the Emperor to approve the  
3 plan since it had been decided by the Liaison Conference.  
625

199. The prosecution says: "\*\*\*\*there is  
no trace whatever in the Diary\*\*\*" of a conversation  
between KONOYE and KIDO related in KIDO's Affidavit  
as having taken place after KONOYE and the Chiefs of  
Staff had seen the Emperor on the 5th of September  
626 627 1941. The Diary entry shows the conversation  
was held:

"I requested Aide de Camp YOKOYAMA to call  
the Chief of the General Staff, the Chief of the  
Naval General Staff and the Premier to the Palace. At  
6 P.M. they were granted an audience by the Emperor  
to answer the Imperial questions. After this retirement  
from the presence of the Emperor, the Premier called  
on me to have a talk with me. He took leave at 7 p.m."

200. The prosecution also says there is no  
trace in the diary of KIDO's conversation with KONOYE  
before KONOYE saw the Emperor on that date. This  
same exhibit 628 recites that "At 4:30 P.M. the Premier  
proceeded to the Palace and submitted to the Throne

625. Aff. par. 192, T. 30,952.

626. Par. JJ-66, T. 41,106.

627. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,  
and additional excerpt in KIDO's affidavit Par.  
199, T. 30,951.

628. Ibid.

1 a plan relative to the holding of a council in the  
2 Imperial presence." It is quite apparent that since  
3 KIDO knew the exact time KONOYE went in to see the  
4 Emperor he must have seen him and talked with him,  
5 and the entry shows KIDO knew what KONOYE was going  
6 to submit to the Emperor.

7 201. The Council in the Imperial Presence  
8 was held on September 6th, 1941. Before being summoned  
9 by the Emperor that morning KIDO had a conversation  
10 with Mr. HARA, President of the Privy Council. They  
11 discussed questions which HARA should ask at the  
12 Imperial Conference pointing toward emphasis on  
13 continuance of diplomatic negotiations rather than  
14 preparations for war. The Emperor told KIDO that he  
15 would like to ask some questions at the Conference  
16 and KIDO told him that since HARA was going to ask  
17 important questions on behalf of the Emperor that the  
18 Emperor should, in view of the importance of the  
19 question, warn the High Command to exert every effort  
20 to bring the diplomatic negotiations to an amicable  
21 conclusion. This specifically appears in KIDO's  
22 diary. <sup>629</sup> 630  
23 Diary of September 6th, 1941 as follows:  
24 "Then I advised His Majesty that since HARA,  
25

629. Aff. par. 192, T. 30,953.

630. Ex. 1135, as Cor. Lang. Sec. T. 31,420.

the President of the Privy Council, would ask important  
1 questions on His Majesty's behalf, the Emperor should  
2 give a warning in conclusion that the Supreme War  
3 Command should exert every effort in order to bring  
4 about a diplomatic success inasmuch as the present  
5 decision was such an important one that it might lead  
6 to a war in which our national fortunes would be  
7 staked."

In view of this advice can it be fair to  
9 631  
10 brand KIDO "\*\*\*\*on aggressor at heart?" Does that  
11 warning suggested by KIDO show a criminal mind?

202. KIDO did not attend the Imperial  
12 632 Conference. As shown in his diary KIDO was advised  
13 that HARA asked the questions and the Emperor gave a  
14 warning as suggested by KIDO. This is corroborated  
15 633 by OIKAWA. OIKAWA also testified that the Emperor  
16 took the High Command to task for not answering the  
17 634 questions put by HARA. That HARA asked the questions  
18 and the Emperor gave the warning was also corroborated  
19 635 by TQJO.

203. There is no merit to any contention that

631. Pros. Doc. 0003, T. 16,852.

632. Ex. 1135, as cor. Lang Sec. T. 31,420, Aff. par.

24 193, T. 30,953.

633. T. 34,600-34,602.

25 634. T. 34,602.

635. T. 36,512, 36,513.

KIDO tried to persuade the Emperor not to ask his own questions.<sup>636</sup> As KIDO pointed out on cross-examination and as shown in his diary<sup>638</sup> KIDO believed that HARA should ask the questions as to whether or not emphasis was to be placed on war preparations or the continuance of diplomatic negotiations and the Emperor himself should give a warning on the more important point that the High Command should exert every effort in order to bring about diplomatic success. This point apparently has been overlooked by the prosecution. The diary clearly shows KIDO's opposition to war.

204. The prosecution also states that the conversation KIDO had with HARA before KIDO spoke with the Emperor is not mentioned in the diary.<sup>639</sup> The diary entry specifically shows from the tense used that KIDO did have a prior conversation with HARA. In the original translation of this diary entry the word "only" appeared between the words "the Emperor should" and "give a warning", which was eliminated by the Language Section during KIDO's cross-examination on

640 October 21, 1947.

636. Par. JJ-70, T. 31,369.

637. T. 31,371.

638. Ex. 1135 as cor. Lang. Sec. T. 31,420.

639. Par. JJ-67, T. 41,106.

640. T. 31,420.

1           205. KIDO describes the conversation he and  
2 KONOYE had on September 26, 1941, about KONOYE's desire  
3 to resign and KIDO's suggestion that the decision of  
4 September 6, 1941, should be reviewed, which conver-  
5 sation was only summed up in his diary by the statement  
6 that "I advised him to be prudent." The prosecution  
7 says his diary does not suggest such a conversation.  
8 Again no cross-examination. The diary entry does not  
9 suggest anything to the contrary and there is no evidence  
10 in the case that anything to the contrary was said and  
11 furthermore it does not show a criminal mind.

12           206. In an excerpt from the diary of Ambassador  
13 Grew entitled "Ten Years in Japan," there appears the  
14 substance of a paraphrase of an original text prepared  
15 by the Department of State, September 29, 1941, entitled  
16 "The Ambassador in Japan Reports to the Secretary of  
17 State" as follows:  
18           643

19           "Since the fall of Admiral YONAI's Cabinet in  
20 July of 1940, American diplomacy in Japan has been in  
21 eclipse temporarily through force of circumstances. How-  
22 ever, when the KONOYE-TOYODA regime began last July,  
23 American diplomacy obtained a very active new lease of  
24 life."

25 (641. Ex. 1141, T. 10230.

642. Par JJ-68, T. 41107.

643. Ex. 2837, T. 25376-7.)

Ambassador Grew recalled " \* \* \* that it was not then  
possible under the existing circumstances for any  
Japanese leader or group to reverse the program of ex-  
pansion and expect to survive; \* \* \*"

207. We ask that the Tribunal examine KIDO's  
diary entry of October 9, 1941. It definitely shows  
that KIDO submitted to KONOYE his opinion that the  
resolution of the council in the Imperial Presence on the  
6th of September was too outright and it was not the  
conclusion of exhaustive discussion; that the reconsider-  
ation be given to a war with American and advised him  
that it would be inadvisable to declare war against the  
United States immediately; it should be made clear that  
the termination of the China Incident is the first con-  
sideration and that freedom should be acquired by Japan  
without paying any attention to economic pressure by the  
United States. He also advised that the people should be  
made to understand the necessity for ten or fifteen years  
of hard struggle on the part of Japan and to establish  
a highly defensive nation. He also suggested if neces-  
sary, Japan was ready by belligerency to promote the  
completion of the China Incident. As KIDO explained in  
his affidavit he expounded his opinion to KONOYE so that  
KONOYE could use it in arguing with the military. He

(644. Ex. 1146 as cor. Lang. Sec. T. 11139.  
645. Aff. pars. 200,201, T. 30960-2.)

1 took great pains in carefully impressing KONOYE with the  
2 logic of his opinion. As he said the situation at that  
3 time was so bad that he knew the Army would never agree  
4 unless some positive diversionary attitude was put  
5 forward and it was for this reason that he suggested  
6 completion of the China Incident. The military would not  
7 listen to any plan which meant entire cessation of  
8 hostilities so he suggested if they must fight they  
9 should confine their activities to China. It was a sop  
10 he was offering in a situation which afforded no other  
11 alternatives. It was the only solution to avoidance of  
12 a clash with America. <sup>646</sup> It is quite apparent that if  
13 KIDO had been successful in dissuading the military the  
14 question after that would take care of itself in that if  
15 the European war was brought to an end in the meantime a  
16 big change would occur in the world situation with a  
17 powerful peace movement sweeping over the world and Japan  
18 might be saved. It is quite clear that his intention  
19 was inspired by the desire to absolutely avoid war with  
20 the United States by progressing in the proper direction  
21 slowly but steadily. The prosecution barely mentions the  
22 contents of KIDO's diary of October 9, 1941, in comment-  
23 ing that its remarks directed to the entry of August 7,  
24 1941, apply to the entry of October 9, 1941. <sup>647</sup> But  
25

(646. Aff. par. 201, T. 30962.

647. Par. JJ-70, T. 41107.)

1                 648  
2     those remarks refer to a few words which do not appear  
3     in the latter entry. The prosecution however recognizes  
4     that the diary entries of August 7, 1941, and October 9,  
5     1941, are similar. It apparently recognized that KIDO's  
6     reasoning in the entry of August 7, 1941, was correct,  
7     and its remarks regarding it are likewise applicable  
8     here -- "No doubt, if his advice had been taken we  
9     should not be holding this trial today\* \* \*." 649  
10               THE PRESIDENT: We will recess for fifteen  
11               minutes.

12               (Whereupon, at 1045, a recess was  
13               taken until 1100, after which the proceed-  
14               ings were resumed as follows:)

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25     (648. Par. JJ-65, T. 41104-5.  
          649. Pros. Doc. 0003, T. 16852.)

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MARSHAL OF THE COURT: The International  
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I shall  
continue reading KIDO's summation, page 178, paragraph  
208.

On October 12, 1941 the Ogibuko Conference  
was held at Prince KONOYE's house. There were present  
War Minister TOJO, Navy Minister OIKAWA, Foreign  
Minister TOYODA, Prince KONOYE and SUZUKI, President  
of the Planning Board. TOMITA, Chief Secretary to  
the Cabinet, reported the result of that conference  
to KIDO and it is fully set forth in his diary of that  
day.<sup>650</sup> According to the information KIDO received  
TOJO contended that the Government should make up its  
mind to wage war with America in accordance with the  
decision of the Imperial Conference of September 6th  
as he thought there was no hope for the negotiations  
with America. He added, however, that he did not want  
war if an explanation convincing enough was forthcoming  
that the negotiations would be brought to an amicable  
solution with confidence. Navy Minister OIKAWA said  
in substance that he thought there was still hope for  
650. Ex. 1147, Tr. 10246 as Corrected by Language  
Section, Tr. 11139.

negotiations, that it was desired that Japan come to terms with America even making considerable concessions and that it would be embarrassing to conduct diplomatic negotiations for some time and then start war. Foreign Minister TOYODA said he thought there was some hope for negotiations but that it was impossible to make any prediction as they had to reckon with America. Prime Minister KONOYE stated that there was still hope for the negotiations which he would like to continue. The War Minister was not satisfied with the Prime Minister's explanation. The Conference adjourned after it was decided to draft a memorandum and entrust the Foreign Minister with its study. KIDO's testimony on the Ogikubo Conference is corroborated by KONOYE's Memoirs,<sup>651</sup> MUTO<sup>652</sup> and SUZUKI.<sup>653</sup>

209. TOMITA also told KIDO that from the conversations he had with Admirals OKA and OIKAWA that the Navy was opposed to war but could not openly express its views and would leave it to the Prime Minister to make a decision whether or not Japan should go to war with America. This is also corroborated by KONOYE's Memoirs in so far as OIKAWA is concerned.<sup>654</sup>

24 651. Ex. 2913, Tr. 25862-25865.

25 652. Ex. 3454, Tr. 33104.

653. Tr. 35251-35253.

654. Ex. 2913, Tr. 25862-25865.

210. In commenting on KIDO's diary entry  
1 of October 12, 1941,<sup>655</sup> the prosecution says that  
2 KIDO rightly interprets OIKAWA's statement as "even  
3 making considerable concessions."<sup>656</sup> That is not an  
4 interpretation of KIDO. It is a report of what  
5 OIKAWA said at the Ogikubo Conference as related to  
6 KIDO by TOMITA.<sup>657</sup> The prosecution then remarks,  
7 "If KIDO had ever given similar advice he would have  
8 shown his sincerity." KIDO's advice on many occasions  
9 went far beyond the mere granting of concessions.  
10 For example, as shown in his diary entries of July 31,  
11 658 August 7, 1941,<sup>659</sup> September 6, 1941,<sup>660</sup>  
12 1941,<sup>661</sup> October 17, 1941,<sup>662</sup> October 20,  
13 1941,<sup>663</sup> November 19, 1941, November 26, 1941,<sup>664</sup> and  
14 November 30, 1941,<sup>665</sup> he was opposed to war under any  
15 circumstances.

16 655. Ex. 1147, Tr. 10246 as Corrected by Language  
17 Section, Tr. 11139.

18 656. Affidavit, par. 202, Tr. 30964; par. JJ-71,  
19 Tr. 41108.

20 657. Par. JJ-71, Tr. 41107, 41108.

21 658. Ex. 1125, Tr. 10186 as Corrected by Language  
Section, Tr. 10667.

22 659. Ex. 1130, Tr. 10199 Ibid.

23 660. Ex. 1135, Tr. 10216 as Corrected by Language  
Section, Tr. 31420.

24 661. Ex. 1146, Tr. 10241, as Corrected by Language  
Section, Tr. 11139.

25 662. Ex. 1154, Tr. 10291, as Corrected by Language  
Section, Tr. 11142.

663. Ex. 1156, Tr. 10295.

664. Ex. 1190, Tr. 10429, as Cor. Lang. Sec. Tr. 11143.

665. Ex. 1198, Tr. 10468, as Cor. Lang. Sec. Tr. 12480.

211. As shown, everyone's opinion at the  
1 Ogikubo Conference of October 12, 1941 hinged on the  
2 success or failure of negotiations with America.  
3 Although TOJO did express his opinion with regard to  
4 the stationing of troops in China and refused to  
5 entertain anything that might affect the result of  
6 the China Incident, his viewpoint changed before he  
7 was appointed Prime Minister. Thus the last important  
8 meeting held during the existence of the Third KONOYE  
9 Cabinet ended with no decision as to whether or not  
10 Japan would go to war with America.

212. On October 13, 1941 as a result of the  
13 Ogikubo Conference the political atmosphere became so  
14 tense that it was feared that a war might break out at  
15 any moment under forcible pressure of the militarists.  
16 The situation was so delicate that the Emperor on that  
17 day showed his concern when he discussed with KIDO an  
18 Imperial Rescript in case he was required to grant  
19 sanction to the opening of war. This is shown in  
20 KIDO's Diary of October 13, 1941, only a small portion  
21 of which was processed by the prosecution.<sup>666</sup> That  
22 evening SUZUKI visited KIDO and told him his political  
23 views which might contribute in some way " \* \* \* to  
24 the making of a new turn in our political condition."  
25

666. Aff. par. 204, Tr. 30969.

SUZUKI was in fear of a possible change of government  
1 or a sudden plunge into war due to the intensified  
2 political situation.<sup>667</sup> KIDO expressed his views to  
3 the effect that KONOYE should assume a resolute  
4 attitude and have a full talk with the War and Navy  
5 Ministers in order to solve the dilemma by some means  
6 in order to arrive at a peaceful solution.<sup>668</sup>

213. KIDO is accused of adding a gloss to  
8 his diary of October 13, 1941.<sup>669</sup> The prosecution  
9 claims that the diary states that KIDO and SUZUKI  
10 agreed that KONOYE must try to promote mutual under-  
11 standing between the War and Navy Ministers but that  
12 KIDO adds the words to his diary "to bring about the  
13 peaceful solution."<sup>670</sup> The prosecution however im-  
14 pliedly admits that KIDO had hoped for peaceful  
15 solution because of hesitation of the Navy.<sup>671</sup> In  
16 its interpretation of this diary entry the prosecution  
17 omits to inform the Tribunal and makes no comment on  
18 the fact that the diary entry clearly states that  
19 SUZUKI and KIDO were talking about some way of  
20 "\*\*\* making of a new turn in our political condi-  
21 tion."<sup>672</sup> No one has offered any contradictory

24 667. Aff. par. 204, Tr. 30971.

25 668. Aff. par. 204, Tr. 30971.

669. Ex. 1149, Tr. 10274.

670. Aff. par 204, Tr. 30971.

671. Par. JJ-72, Tr. 41109.

672. Aff. par. 204, Tr. 30971.

1 evidence and no one could possibly say that the new  
2 turn in political conditions referred to anything  
3 other than a peaceful solution. It must be remembered  
4 that this was in the middle of October 1941 when,  
5 according to the Imperial decision of September 6,  
6 1941, a decision for war was to be made. Time was  
7 running out. The prosecution does not comment on the  
8 fact that the Emperor was so apprehensive that he  
9 discussed with KIDO what should be done "in case we  
10 decide on war with the United States and Britain,"<sup>673</sup>  
11 yet it refers to the same exhibit in which it is con-  
12 tained.<sup>674</sup> It is concerning this critical period that  
13 the prosecution, in its summation, makes the revealing  
14 statement: "We submit that KIDO was only interested  
15 in securing agreement no matter what it was."<sup>675</sup> As  
16 pointed out heretofore, this clearly shows that even  
17 the prosecution admits that it has failed to prove  
18 that KIDO had a criminal mind.  
19

20 214. In analyzing the situation as it  
21 existed on or about October 13, 1941 the prosecution  
22 makes three statements. (1) It refers to the China  
23 Incident and concludes "\* \* \* for which no one was  
24 more clearly responsible than KIDO."<sup>676</sup> In answer

25 673. Aff. par. 204, Tr. 30970.  
674. Aff. par. 204, Tr. 30969.

675. Par. JJ-72, Tr. 41109.  
676. Par. JJ-72, Tr. 41108.

need we point out that KIDO was not even in the Cabinet  
1 when the China Incident started? The prosecution  
2 even abandoned Count 19 which charged him with starting  
3 this Incident.<sup>677</sup> (2) With respect to the United  
4 States, Britain and the Netherlands refusing to  
5 supply Japan with oil in particular, the prosecution  
6 says: "They had at last refused to do so."<sup>678</sup> This,  
7 of course, had occurred three months previously, not  
8 in October 1941. (3) It sets up three possible  
9 courses which were open, the second of which was to  
10 make war upon the A.B.C.D. powers and then states:  
11 "TOJO had declared himself for No. 2."<sup>679</sup> The prosecu-  
12 tion gives no citation for this and there is no  
13 evidence of such a decisive declaration. The prosecu-  
14 tion, without any evidence to support it, submits  
15 a conjectural analysis of the three possible courses  
16 which were open to Japan at that time. It is inter-  
17 esting to note that in so doing the prosecution does  
18 not suggest nor comment on the facts referring to  
19 the course suggested at the Ogikubo Conference of  
20 October 12, 1941 which KIDO did not attend. It was  
21 there suggested to continue negotiations with the  
22 United States and if successful \* \* \* all operational

25 677. Par. JJ-89, Tr. 41128.

678. Par. JJ-72, Tr. 41108-41109.

679. Par. JJ-72, Tr. 41109.

preparations be discontinued."<sup>680</sup>

XII. (f) The Recommendation of TOJO as  
Premier.

215. We now approach the decision around which the prosecution's interest in KIDO chiefly lies: the recommendation of TOJO as Premier. The question to be answered is "Did KIDO have a criminal mind in the part he played in this critical period in Japan's history?" The evidence is overwhelming that he did not. In none of the contemporary documents nor in the subsequent testimony adduced at this trial is there any evidence that he did. To hold that KIDO recommended TOJO to lead Japan to war would necessitate a decision diametrically opposed to the evidence in this case.

216. The principal persons who were considered for the Premiership were Prince HIGASHIKUNI, General UGAKI, Admiral OIKAWA and General TOJO. An examination of the evidence discloses that the part KIDO played in the recommendation was that of a man sincerely and honestly desirous of avoiding war. The evidence discloses<sup>681</sup> beyond peradventure of doubt

680. Diary, Ex. 1147, Tr. 10246, as Corrected by Language Section, Tr. 11140.

681. Aff. par. 205-219, Tr. 30972-31021.  
Ex. 2250, Tr. 16198.  
Ex. 1148, Tr. 10250, 10266-10267

that KIDO believed a Premier was needed who could cope with the following problems:

1. The interpretation of the decision of the Imperial Conference of September 6, 1941, which was the cause of the fall of the KONOYE Cabinet.

2. A repeal of that decision so as to start afresh with a clean slate.

3. After the decision was repealed a re-examination of the diplomatic negotiations with America so as to study the question from a new angle and bring about successful negotiations.

4. The control of the younger militarists who were pressing for war and to this end the Premier should be able to control and effect harmony and co-operation in the Army itself and between the Army and the Navy in full pursuance of Imperial wishes.

5. An acquaintance with the events and decisions of the past few months; and ability to reflect upon and appraise them accurately; and to this end one who was an outsider would not be able to understand them properly thus defeating the purpose of the cabinet change.

217. If KIDO had a criminal mind and was seeking to recommend a Premier to lead Japan successfully into war it is only reasonable to say that he

would never have given a thought to any of the above  
1 mentioned matters. All his thoughts, all his acts  
2 and all his energies would have been devoted to the  
3 question: who could best lead Japan to victory? The  
4 absence of such evidence is decisive. The presence  
5 of documentary evidence written at that time, showing  
6 that KIDO was only interested in avoiding the war,  
7 is entitled to the greatest weight of probity,  
8 credibility and accuracy. As opposed to this the  
9 Tribunal is asked to accept the prosecution's  
10 specious arguments, unsupported by the evidence and  
11 which confuse rather than clarify the facts. Let us  
12 now examine the facts step by step.

14           218. On October 15, 1941 the question of  
15 a cabinet headed by Prince HIGASHIKUNI arose. As  
16 shown, KIDO, Imperial Household Minister MATSUDAIRA,  
17 Tsuneo, and the Emperor were opposed to this.<sup>682</sup> The  
18 advocates of a HIGASHIKUNI Cabinet had different  
19 motives. Prince KONOYE desired it as he believed it  
20 would restrain the Army and avert war.<sup>683</sup> As for the  
21 Army, even granted that War Minister TOJO was like-  
22 minded as Prince KONOYE, there was grave doubt as to

24           682. Ex. 1150 as Corrected by Language Section, Tr.  
25           11140; Aff. par. 206, Tr. 30996-30980.

683. Aff. par. 205, Tr. 30972; KONOYE's Memoirs,  
Ex. 1148, p. 9, Tr. 10266-10267.

the real motives of the military officers who formed  
1 the mainstay of the Army. The possibility of availing  
2 themselves of the Prince's position as Prime Minister  
3 and dragging the country into war was in full evidence  
4 because the Prince's entourage included many dangerous  
5 elements. It would have been impossible to purge  
6 those elements if Prince HIGASHIKUNI formed the  
7 succeeding cabinet. In addition, Prince HIGASHIKUNI,  
8 although talented, was lacking in political exper-  
9 ience and training and as the situation was extremely  
10 difficult it would have been well nigh impossible for  
11 the Prince to grasp the situation and work out a plan  
12 to cope with it. The foregoing appears in KIDO's  
13 684.  
14 testimony.

219. As KIDO pointed out in his affidavit:<sup>685</sup>  
15 "The result would be that the Prince would  
16 be reduced to a mere figurehead, and actual political  
17 power would be assumed by the Deputy Prime Minister.  
18 And judging by personalities, available at that time,  
19 the probability was quite high that the post of  
20 Deputy Premier would be concurrently assumed by the  
21 Minister of War. Such being the case, the possibility  
22 of averting war would be very slim under the  
23  
24 684. Aff. par. 205, Tr. 30973.  
25 685. Aff. par. 205, Tr. 30974.

684. Aff. par. 205, Tr. 30973.  
685. Aff. par. 205, Tr. 30974.

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11 the Prince to grasp the situation and work out a plan  
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22 Minister of War. Such being the case, the possibility  
23 of averting war would be very slim under the

24  
25 684. Aff. par. 205, Tr. 30973.  
685. Aff. par. 205, Tr. 30974.

HIGASHIKUNI Cabinet."

The prosecution guesses that the Deputy Prime Minister would probably be TOJO and that therefore KIDO well knew that the possibility of avoiding war was even slimmer when TOJO became Premier.<sup>686</sup> In addition to the fact that the probabilities were that Prince HIGASHIKUNI would have appointed one of his own adherents as War Minister, the evidence is that it would not have been TOJO because according to KONOYE's memoirs<sup>687</sup> TOJO's opinion was that if Prince HIGASHIKUNI was appointed, "I believe that there is no other alternative but to return the decision of the recent Imperial Conference back to a clean slate once more by all of us, even including all of the Supreme Command resigning and to start anew with new men coming forward." It is therefore apparent that the prosecution's guess that the new Deputy Prime Minister would have been TOJO is contrary to the evidence.

220. The prosecution states with respect to the appointment of a HIGASHIKUNI Cabinet \*\*\* KIDO would only agree to it if a common policy had previously been worked out between the Army and Navy.<sup>688</sup> The prosecution then states: "Again the diary contains

686. Par. JJ-73, Tr. 41110.

687. Ex. 1148, Tr. 10265.

688. Par. JJ-73, Tr. 41110.

no indication what this common policy should be,  
but Paragraph 205 of the affidavit supplies the  
usual gloss \* \* \*.<sup>689</sup> The diary entry of October  
15, 1941,<sup>690</sup> which the prosecution had before it,  
clearly shows what the common policy between the  
Army and Navy should be and KIDO's affidavit contains  
no gloss. The diary specifically states:

"The Premier, who joined our conversation  
on his withdrawal from the presence of the Emperor,  
said that when he made a report to the Emperor on the  
proposed plan, His Majesty said that if the Army and  
the Navy agreed upon the peaceful policy and it is  
the outcome of necessity to have the Prince's Cabinet,  
then there was no alternative but to approve the  
plan."<sup>691</sup>

The diary then relates that KIDO had a talk  
with the Premier and later had a telephone conversa-  
tion with SUZUKI and according to SUZUKI's report:  
"TOJO's purpose was to establish harmony between the  
Army and the Navy by the influence of the Prince."<sup>692</sup>

As the diary further shows, KIDO then made the

689. Pan, JJ-73, Tr. 41110.

690. Ex. 1150 as Corrected by Language Section,  
Tr. 11140; Aff. par. 206, Tr. 30976-30980.

691. Ibid., Tr. 30979.

692. Aff. par. 206, Tr. 30979.

1 significant statement: "So I objected to the plan."<sup>693</sup>  
2 This definitely shows that KIDO and the Emperor were  
3 opposed to a HIGASHIKUNI Cabinet unless the Army and  
4 Navy first agreed upon a peaceful policy. In addi-  
5 tion, KIDO's Diary of October 16, 1941 <sup>694</sup> substanc-  
6 tiates this position.  
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693. Aff. par. 206, Tr. 30979.

694. Ex. 1151, Tr. 10281 as Corrected by Language  
Section, Tr. 11141.

1           221. In his diary of October 16, 1941,<sup>695</sup> he  
2 recorded that when TOJO called on him KIDO opposed  
3 his idea for the Prince's Cabinet for the same reasons  
4 which he had made clear to SUZUKI (these reasons also  
5 appear in the same diary entry.) KIDO pointed out to  
6 TOJO that the decisions made at the Imperial confer-  
7 ence of September 6 were careless and KIDO urged their  
8 revision, and: "I also stressed the necessity of true  
9 unity between the army and the navy. I stressed the  
10 fact that this was the least our country is asking  
11 for without which no national progress could be expect-  
12         <sup>696</sup>  
13 \*ed."

14           In the document he wrote in November, 1941,  
15 he stated:

16           "In view of the present attitude of the navy,  
17 it is hardly possible to decide on the opening of hos-  
18 tilities against America. On the other hand, without  
19 doubt, the decision of the Council in the Imperial  
20 presence of September 6 is of the utmost importance.  
21 Now, if there should be even a little doubt about the  
22 attitude of the navy or the decision of the council, I  
23 believe it will necessitate a complete reconsideration.  
24 In short, without the decisive assurance of the navy,  
25 the utmost precaution must be taken in plunging into an

695. Ex. 1151, *ibid.*

696. Ex. 1151, as cor. Lang, Sec. tr. 11,141-11,142

697. Ex. 2250, tr. 16,198 - 16,211

1 all-out war and gambling the fate of the country."<sup>698</sup>

2 (The prosecution only quoted part of this  
3 statement.)<sup>699</sup> The exhibit further states that TOJO  
4 completely agreed with KIDO's opinion and said:

5 "... that the decision of the Council in the  
6 Imperial presence was a cancer and that this war could  
7 not be carried out without the firm confidence of the  
8 navy."<sup>700</sup>

9 In his affidavit KIDO recites, with respect  
10 to this interview with TOJO:

11 "... I stated that it was needless to say  
12 that the decision of the Imperial Conference was ex-  
13 tremely important and therefore must be respected and  
14 faithfully executed, but asked him if it was not proper  
15 to reconsider in case there was found any point mani-  
16 festing want of care therein because I thought the  
17 decision was careless. I drew his attention to the  
18 report that the navy necessarily had no confidence in  
19 itself. Thereupon, the War Minister agreed with me,  
20 adding that the decision of the Imperial Conference  
21 could not be executed as it was..."

22 These three consistent recitals of the  
23 facts demonstrate a recognition by KIDO of the evil  
24

25 698. Ex. 2250, tr. 16,206 - 16,207

699. Par. JJ-74, tr. 41,111

700. Ex. 2250, tr. 16,207

701. Ex. par. 209, tr. 30,983

of the September 6 decision, and that a reconsideration  
1 was necessary. There is no merit to the prosecution's  
2 contention that there is no other contemporary document  
3 on this matter. The diary <sup>702</sup> and the account written  
4 in November 1941 <sup>703</sup> which were contemporaneous, are supported  
5 by the Senior Statesmen's Conference of October 17,  
6 <sup>704</sup> 1941, which the prosecution overlooks in making such  
7 a statement, and all of them are corroborative, not  
8 conflicting.  
9

223. As early as September 26, 1941, KIDO  
10 had recognized that the Imperial decision of September  
11 <sup>705</sup> 6, 1941, should be reviewed. Again on October 9,  
12 1941, he set forth in his diary that this decision  
13 seemed to him to be too outright and that it was not  
14 <sup>706</sup> the conclusion of exhaustive discussion, and he  
15 discussed it thoroughly at the meeting of the Senior  
16 <sup>707</sup> Statesmen on October 17, 1941. KIDO's objection was  
17 to the whole decision, not a part of it, as the prosecu-  
18 <sup>708</sup> tion claims. As shown in his November 1941 state-  
19 ment in referring to the decision of September 6, KIDO  
20 said:  
21

22 "... I believe it will necessitate a complete  
23 reconsideration." The prosecution's guess that KIDO's  
24

25 702. Ex. 1151, as Cor. Lang. Sec. tr. 11,141, 11,142

703. Ex. 2250, tr. 16,198-16,211

704. Aff. par. 216, tr. 31,005 - 31,018

705. Aff. par. 196, tr. 30,956

706. Ex. 1146, tr. 10,241 as cor. Lang. Sec. tr. 11,139

707. Aff. par. 216, tr. 31,012

708. Par. JJ-73, tr. 41,110 - 41,111

statement referring to the decision as "rather care-  
less" <sup>710</sup> meant only a part of it is thus made in dis-  
regard of the evidence.

224. After expressing his opinion that he  
thought it would be difficult for the KONOYE Cabinet to  
handle the situation, TOJO further stated in his con-  
versation with KIDO on October 16, 1941, that he thought  
there would be no alternative but to petition a Prince  
of the Blood to form a succeeding cabinet. KIDO asked  
him whether that meant the army had decided to com-  
pletely change its past policy and that a Prince of the  
Blood would be petitioned to dispose of the aftermath,  
as such a volte-face could not be effected by a subject.  
TOJO replied in the negative, adding that a Prince of  
the Blood would be petitioned to form a succeeding  
cabinet for the purpose of deciding on the policy in  
the future. KIDO objected to this and expressed that  
such a cabinet should not be formed except when the  
country had decided on an absolutely peaceful policy.  
TOJO remained silent for some time and then abruptly  
asked. "What will become of Japan then?" KIDO replied  
that Japan might become a third or fourth rate power  
if what he was doing was persisted in. KIDO believed  
710. Par. JJ-73, tr. 41,110

at that time that if he talked to Prince KONOYE and if  
1 Prince KONOYE exerted a little more effort, a way out  
2 of the difficulties might be found, judging by his  
3 interview with the War Minister. KIDO lost no time  
4 in telephoning Prince KONOYE, but he had already  
5 started having his cabinet colleagues tender their  
6 resignations. The foregoing appears in KIDO's testi-  
7 mony.  
8

225. KIDO consulted Prince KONOYE after the  
9 latter had presented the resignation of his cabinet to  
10 the Throne, and the full conversation appears in KIDO's  
11 testimony. <sup>712</sup> He told KONOYE that the decision of  
12 September 6, 1941, was "cancer" and should be scrapped  
13 so as to start afresh with a clean slate. For that  
14 purpose someone fully acquainted with the whole situa-  
15 tion should undertake the formation of the succeeding  
16 cabinet. KIDO believed that one not acquainted with  
17 the circumstances, which were all secret, would meet  
18 with any army opposition and that there would be no  
19 choice except to name Admiral OIKAWA or General TOJO.  
20 They discussed the good and bad features of the appoint-  
21 ment of either of them. Since TOJO had disagreed with  
22 KONOYE it might be taken as a surrender if TOJO were  
23 711. Aff. par. 209, tr. 30,983 - 30,984  
24 712. Aff. par. 211, tr. 30,986

1 appointed. On the other hand, if OIKAWA was appointed,  
2 because the navy did not want war the army might react  
3 stronger. Thus if TOJO were selected and ordered to  
4 disregard the decisions of the Imperial Conference of  
5 September 6 he would be able to control the army, and  
6 if he continued peaceful negotiations the effect on  
7 America would be favorable. KONOYE agreed with KIDO  
8 and stated that if the army got out of control no one  
9 could tell what situation might be precipitated, par-  
10 ticularly as the troops were now down south as far as  
11 Southern French Indo-China. To avoid such an eventuality  
12 TOJO, who had the army in hand, should accept the  
13 appointment, especially judging from his remarks within  
14 the past few days. He did not advocate waging war  
15 immediately with America. As TOJO said, Japan would  
16 not be able to wage war if the navy had no confidence.  
17 As KONOYE also said, a way out of the difficulty might  
18 be found if the Emperor granted a message to TOJO on  
19 this point when His Majesty commanded him to form a  
20 succeeding cabinet. The foregoing is fully set forth  
21 in KIDO's affidavit <sup>713</sup> and substantiated in KONOYE's  
22 Memoirs. <sup>714</sup>

23

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25 713. Aff. par. 211, tr. 30,986 - 30,987

714. Ex. 1148, tr. 10,269 - 10,271

226. On the night of October 16, 1941

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KIDO gave serious and considerable thought to the problem <sup>715</sup> and reviewed his interview with TOJO in which he had noticed that the latter had become more thoughtful and it did not seem that he would necessarily advocate war with America if the Navy was opposed to it. KIDO stated that a change had apparently come over his way of thinking in the past few days. Another reason was TOJO's character since he was appointed Minister of War. TOJO had consistently respected Imperial wishes even stronger than that common to all Japanese soldiers. KIDO reasoned that if the Emperor issued a command to scrap the decision of the Imperial Conference of September 6 and review the situation on a fresh basis he had sincere confidence that TOJO would change his policy in pursuance of Imperial wishes as the backbone of his contention would be gone, that is, it would not be obligatory on him to execute the decision of the Imperial Conference. Furthermore, because of the development of the situation in the past few days it would be difficult to carry out the past policy. KIDO knew and understood that cynical criticism was rampant among foreign

715. Aff. par. 212, Tr. 30,988-9

1 residents in Japan at that time, that it was of no  
2 use to ask the Prime Minister or the Foreign  
3 Minister about Japan's foreign policy as it was only  
4 known at the General Staff of the Army. KIDO per-  
5 haps best summed up his thoughts when he said:

6 "In deference to those cynical criticisms,  
7 I thought that if the Army was made to conduct  
8 state affairs and if the Cabinet, formed by the Army  
9 itself, undertook to adjust the relations with  
10 America in dead earnest, American misgivings might  
11 716 be dispelled."

12 Although KIDO was vigorously cross-examined  
13 on the reasons for the recommendation of TOJO, his  
14 717 testimony was unshaken.

15 227. The next morning, October 17, KONOYE  
16 telephoned him, stating that it was his opinion  
17 that TOJO would be a better choice as Prime Minister  
18 than the Navy minister, provided he was given an  
19 Imperial command to scrap the decision of September  
20 6 and use his best efforts to effect cooperation  
21 718 between the Army and Navy and strive for peace.  
22 719 KONOYE's Memoirs corroborated this. As shown by  
23

24 716. Aff. par. 212, Tr. 30,988-9

25 717. Tr. 31,596-31,600

718. Aff. par. 213, Tr. 30,990

719. Ex. 1148, Tr. 10,271

720  
KIDO in his affidavit, the Senior Statesmen's  
meeting was held that day, October 17, 1941, from  
1:10 p.m. to 3:45. p.m.

228. At the risk of being repetitive,  
we repeat -- in order to attach criminal responsi-  
bility to KIDO for his recommendation of TOJO, it  
is fundamental that the burden is on the prosecution  
to show that KIDO did so with a criminal intent in  
mind. There is absolutely no affirmative evidence  
to which the prosecution can point to support its  
burden. No affirmative statement of KIDO's, or  
of any other witness, and no documents have been  
introduced in evidence stating or indicating that  
KIDO appointed TOJO for the purpose of commencing the  
Pacific War. On the contrary the affirmative evidence  
and the reasonable inferences to be dispassionately  
drawn from all the evidence points unmistakably to  
one conclusion -- KIDO recommended TOJO with the  
sincere and honest intent that by so doing war  
would be averted.

229. The affirmative evidence is perhaps  
best demonstrated by the minutes of the meeting of  
the Senior Statesmen of October 17, 1941. Before  
discussing these minutes we should like to digress

720. Aff. par. 214, Tr. 30,990

for a moment. The prosecution failed to introduce  
1 the minutes of this conference in evidence and yet  
2 it is one of the two conferences for which the  
3 prosecution charges criminality against KIDO.<sup>721</sup>  
4 Appendix E of the Indictment charges that KIDO was  
5 ". . . present at and concurred in the decisions  
6 taken . . ." at the conference of October 17, 1941  
7 (ex-Premiers) ". . . which decision prepared for  
8 and led to unlawful war on 7/8 December 1941"<sup>722</sup> The  
9 prosecution cannot claim ignorance of the existence  
10 of the minutes of this conference because they are  
11 mentioned in KIDO's Diary of October 24, 1941<sup>723</sup> and  
12 the evidence is that the prosecution had this diary  
13 since about December 16, 1945. It cannot claim  
14 negligence in failing to have had possession of such  
15 an important document because it introduced in evi-  
16 dence the minutes of the Senior Statesmen's confer-  
17 ences of July 17, 1940,<sup>724</sup> July 17, 1941,<sup>725</sup> July 18,  
18 1944<sup>726</sup> and April 5, 1945.<sup>727</sup> There is no evidence  
19 in the case that the prosecution did not have these  
20 minutes and no evidence of why they were not intro-  
21  
22 721. Pros. Doc. 0003, Tr. 16,851; Par. JJ-86-87,  
23 Tr. 41,126  
24 722. Indictment.  
25 723. Aff. par. 215, Tr. 30,990  
724. Ex. 532, Tr. 6240  
725. Ex. 1117, Tr. 10,166

726. Ex. 1278, Tr. 11,377  
727. Ex. 1282, Tr. 11,388

duced. The only reasonable inference is that the prosecution knew that these minutes definitely establish that neither KIDO nor any of the Senior Statesmen had any criminal intent in recommending TOJO. Let us now examine the minutes of this conference of ex-premiers of October 17, 1941 and ascertain what took place. The reputation and high standing of the participants is important. There were present besides KIDO, WAKATSUKI, HARA, OKADA, ABE, KIYOURA, YONAI, HIROTA, and HAYASHI.

230. Thus there were only two Army men -- Generals ABE and HAYASHI, and two navy men -- Admirals YONAI and OKADA, present. There is no evidence that KIDO saw, spoke to or exerted any influence on these statesmen before the meeting or at the meeting. There is no evidence and there can be no inference that KIDO controlled or could have controlled the thoughts, words or actions of these men. These statesmen were not politically ambitious. They had no reason to recommend TOJO with any ulterior purpose in mind. Furthermore, there can be no claim by the prosecution that there was any concealment of the facts from these statesmen. A complete and lengthy resume of events carefully prepared by Prince KONOYE, not KIDO, was read to them as the first order of

728 business. In this statement Prince KONOYE clearly  
1 and painstakingly pointed out the decision of the  
2 Imperial Conference of September 6, 1941 which was  
3 that if diplomacy should fail by early October the  
4 government would make up its mind to go to war. He  
5 set forth the divergent contentions of the Army and  
6 the government on the likelihood of success of a  
7 diplomatic settlement. The Army position was that  
8 ". . . there is no prospect of our contentions  
9 being accepted . . ." 729 while the government felt  
10 that if more time was given diplomacy might succeed.

12 231. Attention was drawn by Prince KONOYE  
13 to the fact that the Supreme Command was urging the  
14 government to go to war pursuant to the decision of  
15 September 6, 1941. (TOJO was not in the Supreme  
16 Command.) He further pointed out that the knotty  
17 questions which were involved in the negotiations  
18 with America were:

- 19 1. The question of the intention of with-  
20 drawal of troops from China.
- 21 2. The Tripartite Alliance.
- 22 3. Commercial non-discrimination in the  
23 Pacific Area.

25 728. Aff. par. 216, Tr. 30,992-31,004

729. Aff. par. 216, Tr. 30,992

He explained the position of the Army, the government and the United States on the most difficult of these questions, to wit, troops in China. The views of the government and the Army on war was set forth in detail; the final conclusion being that the Army contended that the freezing of Japanese assets which had been accomplished would eventually impoverish and paralyze Japan, while the government believed that the China Incident should be settled and Japan should husband her resources through hardship and privation. He also explained the Navy's position and its conclusion to leave the decision of diplomacy or war entirely to the Prime minister. He pointed out the strong opinion in Navy circles that war should be avoided. In addition Prince KONOYE chronologically traced the diplomatic negotiations with America step by step from April up to date. He concluded by again pointing out the divergent views of the Army and the Government toward the possibility of success of diplomatic negotiations with America.

232. With this background the Senior  
23 Statesmen then expressed their views. <sup>730</sup> WAKATSUKI,  
24 HARA, OKADA and ABE opened the discussion by pointing  
25 730. Aff. par. 216, Tr. 31,005

1 to the dangers of war due to the exhaustion of  
2 resources, particularly oil. In response to a  
3 question by Mr. KIYOURA as to why the government  
4 should decide its attitude at once when the Ambassa-  
5 dor abroad says there is a chance of success, KIDO  
6 replied:

7 "As for that point, the Imperial Conference  
8 fixed the date of decision in the first part of Oc-  
9 tober. Therefore, there developed a divergence of  
10 views between the Government and the Army, and I  
11 think the Government could not help but be pushed  
12 to the wall."<sup>731</sup>

13 If KIDO had been militarily minded his answer would  
14 have been framed to imply that the government was  
15 obstructing the militarists. In replying to an ob-  
16 servation by Mr. ABE on the same subject, KIDO  
17 pointed out that KONOYE wanted to meet President  
18 Roosevelt and decide policies on broad lines and  
19 that "While America's final reply has not yet been  
20 forthcoming, the date of the Imperial Conference is  
21 fast approaching. That is the actual situation."<sup>732</sup>

22 233. The question was then raised as to  
23 the intentions of the Imperial General Headquarters

24 731. Aff. par. 216, Tr. 31,007  
25 732. Aff. par. 216, Tr. 31,008

and KIDO pointed out that with a question such as  
1 risking Japan's national existence involved a per-  
2 fect agreement of views between the Army and Navy  
3 was essential. KIDO was opposed to the suggestion  
4 that the Supreme Command should recommend the candi-  
5 date for the succeeding Prime Minister. HAYASHI's  
6 proposal that an Imperial Prince in the naval ser-  
7 vice should be the next Prime Minister was opposed  
8 by Admiral YONAI as he thought that practically it  
9 may not work. KIDO also pointed out the impractic-  
10 ability of appointing a Prince of the Blood, as he  
11 did not think that an Imperial Prince should be  
12 called upon to settle the differences between the  
13 Army and Navy and that they should settle their dif-  
14 ferences before he accepted the post. If he failed  
15 to solve this knotty question, the Imperial Family  
16 would come in for a strong denunciation from the  
17 people.  
18

234. WAKATSUKI then asked KIDO for his  
20 views on a succeeding cabinet. KIDO stated his con-  
21 clusion first, that he thought TOJO should be  
22 Premier and set forth the reasons: That the Imperial  
23 Decision of September 6 was a poisonous and ir-  
24 radicable source of difficulty; that the Army knew  
25 it was impossible to wage war with America without

the Navy's determination but the Army could not  
1 help but proceed in accordance with the Imperial  
2 decision of September 6. And that since real  
3 cooperation between the Army and Navy was not forth-  
4 coming the September 6th decision was hurriedly  
5 made. He thought that the most practical way to  
6 save the situation would be to command TOJO to form  
7 the cabinet and at the same time "order him to effect  
8 real cooperation between the Army and Navy and re- 733  
9 examine the decision of the Imperial Conference. ."  
10 TOJO was fully acquainted with the development of  
11 the situation and the difficulty had been keenly  
12 driven home to him. He further pointed out that if  
13 a general or admiral not in active service was com-  
14 manded to form a cabinet "there may be fear of an  
15 unexpected result, in case his formation of the new  
16 cabinet is restricted by a section of the public 734  
17 with the decision of the Imperial Conference."  
18 This clearly shows KIDO realized that a revolution  
19 might occur, if one who could not control the military  
20 was appointed. It also shows that KIDO believed a  
21 certain section 735 might restrict the formation of a  
22 cabinet by one not in control of the military.  
23

24  
25 733. Aff. par. 216, Tr. 31,012 734. Ibid.  
735. Aff. par. 216, Tr. 31,013. Translation says  
"section of the public," which is not in Japanese  
original.

235. Mr. KIYOURA did not think the appointment  
1 of Prince HIGASHIKUNI would be proper and believed  
2 that some one representing the military authorities  
3 should form a cabinet. WAKATSUKI suggested UGAKI  
4 but pointed out that ". . . it would be embarrassing,  
5 should the militarists be opposed to him as before."<sup>736</sup>

KIDO pointed out that UGAKI was a powerful  
6 candidate and an outstanding man possessing actual power  
7 but that he had previously been unable to form a cabinet  
8 due to military opposition and that if UGAKI was command-  
9 ed by the Emperor to form a cabinet there may not be  
10 such opposition to him but nevertheless there was not  
11 an atmosphere in the Army which would extend support  
12 to him. And KIDO concluded by significantly stating  
13 "I am inclined to believe that it will be extremely  
14 difficult for General UGAKI to restrain the militarists."<sup>737</sup>  
15 ABE also pointed out that it would be difficult for  
16 UGAKI to control the situation.

236. KIDO also pointed out that the present  
19 situation with respect to TOJO was different from that  
20 of HATA under the YONAI Cabinet - meaning that HATA had  
21 already resigned prior to the fall of the YONAI Cabinet  
22 whereas TOJO had not resigned. There can be no question  
23

25 736. Aff. par. 216, T. 31,013  
737. Aff. par. 216, T. 31,014

but what KIDO was relying on the Navy to curb the Army  
1 because when OKADA stated: "In any case, the Army em-  
2 braces a vigorous opinion. The Lord Keeper of the Privy  
3 Seal says that the Army fires the rifles from the rear,  
4 but I am afraid that it may develop into a gun."<sup>738</sup>  
5 KIDO replied: "It cannot be said that there is no  
6 occasion for worry on that point, but in short, the  
7 question is how useful the Navy's strength will be."<sup>739</sup>  
8 (KIDO was obviously referring to the hope that the Navy  
9 would restrain the Army.)

237. KIDO also stated in answer to a question  
11 by Mr. YONAI: "An agreement of views between the Army  
12 and Navy and a re-examination of the decision of the  
13 Imperial Conference must be the foundation for saving  
14 the situation; it may be also a good idea to make the  
15 Navy Minister undertake the job, as he stands for  
16 prudence."<sup>740</sup> However, this suggestion of KIDO's that  
17 the Navy Minister be appointed Prime Minister was reject-  
18 ed by the two representatives of the Navy at the Senior  
19 Statesmen's Conference as follows:

22 "Mr. OKADA: I think it will not be absolutely  
23 proper for the Navy to recommend a succeeding Prime  
24 Minister from among its leaders at this time.

25 738. Aff. Par. 216, T. 31,016

739. Ibid.

740. Ibid.

"Mr. YONAI: (Was of the same opinion as Mr.  
OKADA.)"<sup>741</sup>

238. It was decided to recommend TOJO and have  
him concurrently assume the portfolio of war. WAKATSUKI  
was the only one who had suggested General UGAKI, and the  
meeting adjourned with Mr. HARA saying: "The Lord  
Keeper's plan cannot be said to be satisfactory, but as  
there is no other good plan, we cannot but help proceed-  
ing forward with it."<sup>741-a</sup> In such a plight, can there  
be any criticism of KIDO or the Senior Statesmen? Was  
this a decision of a band of conspirators? If so, why  
weren't WAKATSUKI, OKADA, ABE and YONAI, the remaining  
living members, indicted?

239. As the Chief Prosecutor himself said  
during the course of cross-examination of Admiral OKADA:

"Mr. President, I respectfully call this  
Tribunal's attention, as Chief Prosecutor appointed under  
this Charter, to the fact that the accused who are in the  
dock are the people we believe are really responsible  
for this war. If there had been anyone else, they would  
have been in the dock, too."<sup>741-b</sup>

240. On another occasion, in referring to YONAI,

741. Aff. par. 216, T. 31,016  
741-a Aff. par. 215, T. 31,018  
741-b T. 29,305

the following observation was made:  
President: He is

"The President: He is alive in Japan, I  
understand, and if they thought he was guilty they would  
charge him."

The innocence of the Senior Statesmen emphasizes KIDO's  
innocence.

innocence.

6           241. The Prosecution sets this conference forth  
7         as one of the two KIDO attended at which a decision was  
8         made preparing for and leading to the Pacific War. We  
9         challenge the prosecution to point to a single statement  
10       he made at this Conference, indicating in the slightest  
11       way that he or any of the others recommended TOJO for  
12       the purpose of preparing for or leading to the Pacific  
13       War. The only conclusion possible is that he was  
14       recommended for the opposite purpose. The prosecution  
15       declines to analyze this conference in detail and points  
16       to no statement by KIDO at it to support its claim. The  
17       prosecution's only treatment of it is to try to becloud  
18       the issue by pointing to unimportant and unfounded picayune  
19       details concerning contemporary statements, which in no  
20       way conflict with this conference or KIDO's affidavit.  
21

742. T. 25, 162  
743. Par. JJ-75, T. 41, 114

the Senior Statesmen's Conference definitely show that  
1 ABE said "I think it may be very difficult for General  
2 UGAKI to control the situation under the prevailing  
3 circumstances." <sup>744</sup> Thus, not only did ABE oppose UGAKI,  
4 and although OKADA had expressed a thought that ". . .  
5 UGAKI may be a good candidate, if the military circles can  
6 be reconciled with him" <sup>745</sup> OKADA finally stated: "No, I  
7 have not necessarily recommended General UGAKI." <sup>746</sup> Even  
8 WAKATSUKI's endorsement of UGAKI was qualified by his  
9 statement that ". . . though it would be embarrassing,  
10 should the militarists be opposed to him as before."<sup>747</sup>  
11 Furthermore, as pointed out by General ABE to this  
12 Tribunal, "There was no person against having General  
13 TOJO as Prime Minister absolutely - there was no absolute  
14 objection." <sup>748</sup>

16 243. The prosecution's hindsight guess <sup>749</sup> set  
17 up General UGAKI as ". . . the only man who might per-  
18 haps have averted war altogether." UGAKI himself doubted  
19 this. <sup>750</sup> The prosecution, apparently finally realizing  
20 that UGAKI would never have been able to form a cabinet  
21 or control the military, retreated from its position and  
22

23 744. T. 31,015

24 745. T. 31,017

24 746. T. 31,017

24 747. T. 31,013

25 748. T. 34,406 - 34,409

749. Pros. Doc. 0003, T. 16,853

750. T. 34,913

on cross-examination of KIDO tried to show that OIKAWA  
1 should have been appointed as Premier but KIDO pointed  
2 out that the two Navy Senior Statesmen were opposed to  
3 OIKAWA. The prosecution then dropped the subject.<sup>751</sup>  
4 That both Navy Senior Statesmen OKADA and YONAI opposed  
5 OIKAWA appears in the resume of the Senior Statesmen's  
6 Conference,<sup>752</sup> and the prosecution does not make a third  
7 suggestion in summation. As mentioned before, KONOYE had  
8 preferred TOJO to OIKAWA.<sup>753</sup>

9       244. Contrary to the prosecution's assertion,  
10 there is no difference between the contemporary documents  
11 -- the complete record of the meeting of the Senior States-  
12 men;<sup>754</sup> the brief resume of the important points thereof  
13 contained in KIDO's Diary,<sup>755</sup> and KIDO's description in  
14 the article he wrote in November 1941.<sup>756</sup> The prosecution  
15 bandies with words, apparently in the hope that the Tribun-  
16 al will overlook the fact that these three contemporaneous  
17 documents definitely establish that TOJO was not recommend-  
18 ed by either KIDO or the Senior Statesmen for the purpose  
19 of going to war.

21       245. The idea of KIDO and the Senior Statesmen  
22 to have a military leader assume the helm of state with a

- 23       251. T. 31,600  
24       252. Aff. par. 216, T. 31,016  
25       253. Ex. 1148, T. 10,271  
254. Aff. par. 216, T. 30,901 - 31,018  
255. Ex. 1154, T. 10,201 as corr. Lang. Sec. T. 11,142  
256. Ex. 2250, T. 16,198 - 16,211

strict control over the military was not a new one.

1 MATSUDAIRA, Yasumasa testified that Mr. HIROTA had told  
2 him in July 1941: "that for the purpose of adjusting the  
3 eccentric way of the military there was no other way but  
4 to have military leaders occupy the responsible posts  
5 and assume the helm of state with a strict control over  
6 the military" <sup>757</sup> and that Marquis MATSUDAIRA reported  
7 this to Marquis KIDO prior to October 17, 1941. <sup>758</sup> The  
8 prosecution did not desire to cross-examine him.  
9

10 246. Admiral SHIMADA also expressed the same  
11 sentiments when he said on cross-examination: "The  
12 purport of my meaning as set forth there in my affidavit  
13 is that in this connection, in order to bring about a  
14 settlement of the negotiations between Japan and the  
15 United States, it would be necessary first of all to  
16 effect a powerful control over the General Staff Office  
17 of the army. Unless that were done, it would be difficult.  
18

19 247. KIDO fully reported the result of the  
20 Senior Statesmen Conference to the Emperor and recommended  
21 TOJO to the Throne as the next Premier.  
22

23 248. In order to carry out the suggestion to  
24 disregard the Imperial Decision of September 6, 1941 and  
25 the suggestion that the Army and Navy cooperate closer,  
26

757. T. 30,026, 30,027

758. Ibid.

759. T. 34,691

760. Aff. par. 218, T. 31,018 - 31,019

KIDO asked the Emperor that such instructions be given to  
1 TOJO and OIKAWA.<sup>761</sup> TOJO was then called to the palace  
2 and received Imperial instructions to form a new cabinet  
3 and was told, "At this juncture you will see to it that  
4 the cooperation between the army and the navy is made  
5 closer than ever."<sup>762</sup> OIKAWA was then called in audience  
6 and instructed by the Emperor that he, himself ". . .  
7 must see to it that the cooperation between the army and  
8 navy is made closer than ever."<sup>763</sup> After retiring from  
9 the Imperial presence, KIDO, in accordance with instruc-  
10 tions from the Emperor, told both TOJO and OIKAWA:<sup>764</sup>

"I presume that you have just received Imperial  
12 words in regard to cooperation between the Army and the  
13 Navy. As regards the fundamental line of national  
14 policy, I am commanded to convey to you the Imperial  
15 desire that the careful considerations be taken by  
16 studying both the internal and the external situations  
17 more comprehensively and more profoundly than ever,  
18 regardless of the resolution of the September 6 Imperial  
19 Conference."

21 249. The prosecution claims that there are two  
22 different contemporary statements of the two communica-  
23

24 761. Ibid

762. Aff. par. 219, T. 31,021

763. Ibid.

764. Aff. par. 218, Tr. 31,019

tions of the Emperor and KIDO's own communication to  
1 TOJO and OIKAWA,<sup>765</sup> one in KIDO's Diary,<sup>766</sup> and as  
2 set forth by KIDO in the statement he made in November,  
3 1941.<sup>767</sup> In his diary KIDO set forth the exact words  
4 of the message which he gave to TOJO and OIKAWA. In  
5 his resume of November, 1941 he set forth the exact  
6 words of this message and, in addition, both instruc-  
7 tions that the Emperor had given TOJO and OIKAWA. In  
8 his affidavit he sets forth in full the three communica-  
9 tions.<sup>768</sup> There is no difference in the original  
10 Japanese of these communications. The original Japanese  
11 of all three communications contained in the November,  
12 1941 statement is the same as the original Japanese  
13 contained in KIDO's affidavit, (which are correct  
14 translations) and the same is true with respect to  
15 the other communication which KIDO delivered to TOJO  
16 and OIKAWA as set forth in his diary of October 17, 1941.  
17 The difference is not a difference of contemporary  
18 accounts, as the prosecution would have the Tribunal  
19 believe. It is a difference of the prosecution's  
20 translations.

- 22  
23 765. Par. JJ-77, T. 41, 117  
24 766. Ex. 1154, T. 10, 261-10, 299 as corr. by  
Lang. Sec., T. 11, 142  
25 767. Ex. 2250, T. 16, 210-16, 211  
768. Aff. Paras. 218 - 219, T. 31, 018-19-20-21.

tions of the Emperor and KIDO's own communication to  
1 TOJO and OIKAWA,<sup>765</sup> one in KIDO's Diary,<sup>766</sup> and as  
2 set forth by KIDO in the statement he made in November,  
3 1941.<sup>767</sup> In his diary KIDO set forth the exact words  
4 of the message which he gave to TOJO and OIKAWA. In  
5 his resume of November, 1941 he set forth the exact  
6 words of this message and, in addition, both instruc-  
7 tions that the Emperor had given TOJO and OIKAWA. In  
8 his affidavit he sets forth in full the three communica-  
9 tions.<sup>768</sup> There is no difference in the original  
10 Japanese of these communications. The original Japanese  
11 of all three communications contained in the November,  
12 1941 statement is the same as the original Japanese  
13 contained in KIDO's affidavit, (which are correct  
14 translations) and the same is true with respect to  
15 the other communication which KIDO delivered to TOJO  
16 and OIKAWA as set forth in his diary of October 17, 1941.  
17 The difference is not a difference of contemporary  
18 accounts, as the prosecution would have the Tribunal  
19 believe. It is a difference of the prosecution's  
20 translations.

23 765. Par. JJ-77, T. 41,117

24 766. Ex. 1154, T. 10,291-10,299 as corr. by  
Lang. Sec., T. 11,142

25 767. Ex. 2250, T. 16,210-16,211

768. Aff. Paras. 218 - 219, T. 31,018-19-20-21.

250. The accused TOGO has presented several  
1 peeves against KIDO. Although KIDO was not previously  
2 cross-examined by TOGO's counsel on any of these, TOGO  
3 was cross-examined on all of these. For example, in his  
4 direct testimony TOGO complained that the Foreign Minister  
5 was ignored in the taking of serious decisions affecting  
6 the national policy and cited the instance on October 17,  
7 1941 when the Lord Keeper of the Privy Seal called in the  
8 outgoing War and Navy Ministers but not the Foreign Min-  
9 ister. Yet in the next paragraph he admits in substance  
10 that he knew that when asked by TOJO on October 17, 1941  
11 to assume the post of Foreign Minister. It is only reas-  
12 onable to suppose that the Prime Minister would convey  
13 the Emperor's orders to his new cabinet which he, in fact,  
14 did. It is also obvious that the reason why the outgoing  
15 War and Navy Ministers were given the instructions was  
16 because of the Emperor's orders that there should be  
17 close cooperation between the Army and Navy, and it was  
18 these officials who had a say in the appointment of the  
19 new War and Navy Ministers. Furthermore, KIDO was carry-  
20 ing out the instructions of the Emperor in giving the  
21 orders to the outgoing War and Navy Ministers.  
22 769  
23 Apparently TOGO relented from his peeve because when he  
24 was asked about this criticism of KIDO on cross-examina-  
25 769. T. 35,670

ation, and it was pointed out to him the efforts of the  
1 Emperor on the advice of KIDO to give those instructions,  
2 TOGO stated: "I have no desire whatsoever to comment  
3 or criticize the wishes expressed by the Emperor." 770  
4

THE PRESIDENT: We will adjourn until half  
5 past one.  
6

(Whereupon, at 1200, a recess was taken.)  
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## AFTERNOON SESSION

1                   The Tribunal met, pursuant to recess, at 1330.

2                   MARSHAL OF THE COURT: The International  
3                   Military Tribunal for the Far East is now resumed.

4                   THE PRESIDENT: With the Tribunal's permission  
5                   the accused TOGO will be absent from the courtroom the  
6                   whole of the afternoon conferring with his counsel.

7                   Mr. Logan.

8                   MR. LOGAN: If the Tribunal please, I would  
9                   like to continue reading the summation of KIDO, page  
10                  212, paragraph 251.

11                  Let us examine the statement of November 1941  
12                  in which KIDO stressed the difficulties which attended  
13                  his efforts to save the situation following the resig-  
14                  nation of the KONOYE Cabinet.<sup>771</sup> These difficulties as  
15                  set forth therein were:

16                  (1) Objectively regarded, there was no can-  
17                  didate for the premiership who could stand comparison  
18                  with Prince KONOYE.

19                  (2) The real cause of the cabinet change  
20                  was the question of interpretation of the decision  
21                  of the Imperial Conference of September 6, 1941, infor-  
22                  mation on which was not released for publication.

23                  771. Ex. 2250, T. 16,199 as cor. by Language Section

(3) The developments of the situation called  
1 for the repeal of the decision of the aforesaid Im-  
2 perial Conference so as to start afresh with a clean  
3 slate.

(4) The decision of the Imperial Conference  
5 to the effect that it should be decided to wage war  
6 with America unless it would definitely appear that  
7 diplomatic negotiations with America would be success-  
8 ful not later than the first part of October was tan-  
9 tamount to the transfer of the Imperial standard to  
10 the military, and therefore it would be extremely dif-  
11 ficult to wipe the slate clean and study the question  
12 from a new angle.

(5) Consequently one who is to be commanded  
15 by the Emperor to form a succeeding cabinet should be  
16 able not only to control the Army fully but also to  
17 effect harmony and cooperation between the Army and the  
18 Navy and in full pursuance of Imperial wishes.

(6) One who would be able to fulfill those  
20 conditions would not only be fully acquainted with the  
21 above circumstances, but be able to reflect on them  
22 leading to the present situation. Thus, an outsider  
23 would not understand them or be able to oppose the  
24 military, therefore defeating the purpose of the cab-  
25 inet change.

1           252. Ambassador Grew knew of the elements  
2         within the Army pressing for war. In recording his  
3         conversation with Prince KONOYE on September 6, 1941  
4         he set forth what Prince KONOYE told him as follows:

5           "He admitted that there are certain elements  
6         within the armed forces who do not approve his  
7         policies, but he voiced the conviction that since  
8         he had the full support of the responsible  
9         chiefs of the Army and Navy it would be possi-  
10        ble for him to put down and control any opposi-  
11        <sup>772</sup>tion which might develop among these elements."

12          253. From the foregoing it is quite apparent  
13         that it is idle for the prosecution to say that KIDO  
14         at that time did not have in mind a premier who would  
15         be able to control the Army if the negotiations for  
16         peace were successful. We also refer to the corrobor-  
17         ating evidence on cross-examination of the witness  
18         <sup>773</sup>  
19         TOMIYOSHI.

20          254. It is idle for the prosecution to con-  
21         tend that no contemporary document sustains KIDO's  
22         affidavit in which he states his opinion which was  
23         shared by others, that UGAKI would not have been able  
24         to form a cabinet for if he did there would have been  
25         a revolution in Japan followed by war. KIDO's account

772. T. 25,371

773. T. 35,533-7

774

written in November 1941 states:

1            "In other words, the man who was entrusted  
2            with the Imperial order at this time, and formed  
3            a Cabinet, must comply with the wishes of the  
4            Emperor in assuming leadership of the military,  
5            especially of the Army, and also in bringing  
6            about the complete cooperation of the Army and  
7            the Navy. The person who was able to meet these  
8            conditions had to be a man who could sufficiently  
9            comprehend the development of the situation up  
10           up to this time, and had sincerely reviewed the  
11           circumstances which had brought about the pres-  
12           ent situation. In this respect, I thought, that  
13           a man who had been an outsider to date would not  
14           only not be able fully to understand the above-  
15           mentioned situation, but would most likely be  
16           unable to resist the so-called 'Imperial Stan-  
17           dard' and would inevitably destroy the signifi-  
18           cance of the recent political change."

\* \* \* \*

21           "In the meantime, the argument to restrain  
22           the Army and tide over the threatening crisis of  
23           war against America and Britain by appointing  
24           General UGAKI was considerably and strongly  
25

774. Ex. 2250, as cor. by Language Section, T. 16,208

stressed, and there were demands directed to  
1 me from various quarters to heed this argument,  
2 but as for myself, I estimated it was unsuitable  
3 at this time, according to the aforementioned  
4 reasons. Consequently, I finally determined to  
5 recommend War Minister TOJO to the Throne. Be-  
6 ing resolved to take over the whole responsibil-  
7 ity upon myself, I submitted the recommendation  
8 to the Emperor.<sup>775</sup>

9       255. In view of this can the prosecution  
10 seriously contend that KIDO did not have in mind the  
11 fact that UGAKI would be unable to form a cabinet or  
12 if he did there would have been a revolution in Japan  
13 followed by war? It was well known to everyone that  
14 UGAKI was unable to control the Army. UGAKI indicated  
15 776 that himself before this Tribunal. He was retired  
16 at that time and was not familiar with the circumstances  
17 which had brought on the situation. Furthermore, the  
18 contemporary document of the Senior Statesmen Confer-  
19 777 ences definitely shows that UGAKI was considered by  
20 the Senior Statesmen and that they, too, knew that he  
21 would be unable to control the militarists. As a  
22 matter of fact, as shown KIDO specifically said at that  
23 775. Ex. 2250 as cor. by Language Section, T. 16,211  
24 776. T. 23,891  
25 777. Aff. par. 216, T. 31,005-31,018

meeting:

1        "I am inclined to believe that it will be  
2        extremely difficult for General UGAKI to restrain  
3                              778  
4        the militarists."

5        256. This is another example where the prosecu-  
6        tion, lacking evidence that KIDO did anything wrong,  
7        endeavors to confuse the issues by beclouding them.  
8        What other interpretation could be put on the words  
9        "controlling the militarists," than a prevention of a  
10       revolution followed by war in the event peace negotia-  
11       tions succeeded? The prosecution takes one position  
12       in its summation against KIDO and another position in  
13       its general summation. It adopts the defense position  
14       on this matter in general summation when commenting on  
15       the fact that the advisors of the Emperor were in mortal  
16       fear of assassination. The prosecution says:

17       "They knew full well that in the event  
18       that TOJO, the leader of these irresponsible  
19       militarists, was not chosen to be the head of  
20       the Japanese Government they faced a national  
21       779  
22       insurrection and even a coup d'etat."

23       257. Now, just what did the words, "coopera-  
24       tion between the Army and Navy" mean? Let us examine  
25       the prosecution's interpretations, and then compare them

778. T. 31,014

779. Par. 18, Pros. Argument, T. 38,962

with the evidence. On January 24, 1947, the prosecution's position was that KIDO's words and the Emperor's words to OIKAWA and TOJO,

"... could only mean that they should appoint a Navy Minister who would do whatever TOJO told them. They appointed SHIMADA -- and he did."  
780

Today, however, after it was affirmatively demonstrated that neither KIDO nor TOJO had anything whatsoever to do with the appointment of Navy Minister SHIMADA, now, chameleon-like, the position changes. The prosecution now says with respect to the instructions to TOJO and OIKAWA:

"The whole thing in our submission plainly means no more than this -- 'before you decide on war be sure that both the Army and the Navy  
781  
are agreed that we shall win.'"

258. Thus, although on two separate occasions it contended that the instructions could mean only one thing, the prosecution sets forth two different things they could mean:

(1) A Navy Minister who would do TOJO's bidding;

(2) Before decision on war, assurance must

780. Pros. Doc. 0003, P. 49, T. 16,853  
781. Par. JJ-77, T. 41,118

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2 position was that KIDO's words and the Emperor's  
3 words to OIKAWA and TOJO,  
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5 appoint a Navy Minister who would do whatever  
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15 means no more than this -- 'before you decide  
16 on war be sure that both the Army and the Navy  
17 are agreed that we shall win.'<sup>781</sup>"

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21 they could mean:

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781. Par. JJ-77, T. 41,118

be made that the Army and Navy are agreed that Japan  
1 shall win.  
2 Let us give the prosecution the benefit of the doubt  
3 and assume that it meant to say that its guess is that  
4 the instructions meant either or both. The evidence,  
5 as opposed to the prosecution's guess, or guesses, shows  
6 how wrong is the prosecution.

7       259. Let us now examine the evidence which  
8 the prosecution overlooked. First, with respect to  
9 SHIMADA. The evidence is overwhelming that KIDO had  
10 absolutely nothing to do with the appointment of SHIMADA.  
11 Admiral OIKAWA, who was the recipient of the instruc-  
12 tions from KIDO and the Emperor, testified that neither  
13 KIDO nor anyone on his behalf ever spoke to him and  
14 suggested that SHIMADA be appointed Navy Minister.<sup>782</sup>  
15 He also testified that SHIMADA was not appointed Navy  
16 Minister at the request of General TOJO or anyone else  
17 on his behalf. He stated that he himself ". . . felt  
18 that SHIMADA would be the most appropriate person to  
19 take charge of the Navy Ministry and to help solve the  
20 situation, and did my utmost to persuade SHIMADA to  
21 accept the post. Other Navy leaders also felt the same  
22 way I did."<sup>783</sup> He denied emphatically that anyone outside  
23 of the Navy Ministry or naval circles brought any  
24  
25

782. T. 33,344

783. T. 33,346

pressure whatsoever to bear with respect to the appointment of Admiral SHIMADA as Navy Minister. Admiral OIKAWA also testified:

"From the evening of October 16, 1941 until I arose the following morning I carefully deliberated as to whom to recommend as Navy Minister. Around 11 a.m. that morning I went to see Prince FUSHIMI and told him that I considered SHIMADA as my logical successor and he agreed that SHIMADA was the best choice of available candidates. My opinion was definitely formulated on the morning of October 17, 1941 and before I knew TOJO was to assume the premiership. Therefore, there is absolutely no truth to the allegation that Admiral SHIMADA was appointed because TOJO wanted him to be. To my knowledge Admiral SHIMADA and TOJO were not even acquainted at that time."

260. In his direct testimony Admiral SHIMADA said:

"He (OIKAWA) then told me he would like to recommend me as his successor for the Navy Ministership under a new cabinet which was being formed. He said that he had carefully considered all of

784. T. 33,347

785. T. 34,572

the available high-ranking naval officers and  
1 had come to the conclusion that I was best qualifi-  
2 fied for the post."<sup>786</sup>

3 He, too, clearly stated that no pressure was  
4 brought by KIDO or anyone else to have him appointed  
5 to do the bidding of TOJO.<sup>787</sup>

6 261. TOJO, the other recipient of the instruc-  
7 tions, testified at no time did KIDO either directly  
8 or indirectly, in writing or orally, by any deed of his  
9 or any act, have anything whatsoever to do with the  
10 appointment of SHIMADA as Navy Minister.<sup>788</sup> To show the  
11 lack of importance of KIDO and that he had no influence  
12 over the military the Tribunal's attention is directed  
13 to the fact that TOJO even went further in saying,  
14 "Even if he did, I would not have permitted him to do  
15 so."<sup>789</sup> This is further demonstrated by the testimony  
16 of Admiral SHIMADA. After testifying that he only came  
17 to know KIDO after he had been appointed Navy Minister  
18 the record reveals the following questions and answers:<sup>790</sup>

19  
20 "Q Did KIDO at any time prior to your acceptance  
21 of the post of Navy Minister ever speak with you and  
22 ask you to accept the post?

23 "A Preposterous. It is absolutely not the case.

24 "Q Did he ever send anyone to you and ask you

25 786. T. 34,650

789. Ibid.

787. T. 34,686

790. T. 34,686

788. T. 36,520

on his behalf to accept the position as Navy Minister?

"A If any messenger like that came I would just  
bark at him and kick him out."

3           262. In guessing that SHIMADA was appointed  
4 to do TOJO's bidding, the prosecution ignores the fact  
5 that NAGANO, who was Chief of the Navy General Staff  
6 in the KONOYE Cabinet, continued in that powerful of-  
7 fice in the TOJO Cabinet. It was NAGANO who, on July  
8 31, 1941, told the Emperor in referring to a war with  
9 America, "It was even doubtful whether or not we would  
10 even win . . ."  
791

11           263. Now let us examine the evidence to see  
12           if the prosecution's second guess is correct. KIDO  
13           says:

22 This was the thought behind his statement  
23 expressed at the Senior Statesmen Conference. 793

24 Ex. 1125, T. 10,186 as cor. by Language Section,

24 Ex. 1125, T. 10,186 as cor. by Language Section,  
25 T. 10,667  
292. Aff. par. 223, T. 31,025

793. Aff. par. 223, T. 31, 024-51, 02

264. KIDO's statement is corroborated by  
1 others. Admiral OIKAWA testified:  
2       794

3       "I interpreted the Emperor's words to mean  
4       that both the Army and the Navy should reject  
5       all obstacles which hitherto had presented them-  
6       selves and which might tend to make impossible  
7       the further continuance of Japan-American nego-  
8       tiations, and from a new and impartial stand-  
9       point confer with each other for the purpose of  
10       striving to solve the situation peacefully. This  
11       was because the Emperor had always earnestly  
12       desired for the peaceful solution of the situa-  
13       tion."

14       TOJO confirmed OIKAWA's interpretation when  
15       795  
16       cross-examined and said,

17       "But I am convinced that there can be no  
18       lie in what OIKAWA has said before this Tri-  
19       bunal on oath,"

20       adding,

21       "I was well aware indeed of the Emperor's  
22       state of mind, namely, that the Emperor was  
23       extremely desirous of effecting a peaceful  
24       solution of the situation, and I am sure that

25       794. T. 33,345  
795. T. 36,506

my interpretation of the Emperor's state of  
796  
mind was correct."

1 When asked if he interpreted the Emperor's  
2 words to mean that the Army should blindly follow the  
3 Navy or that the Navy should blindly follow the Army  
4 797 798  
as suggested by the prosecution, TOJO replied,

5 "Even as a matter of common sense such a  
6 proposition is inconceivable, and it is equally  
7 inconceivable that the Emperor should think of  
8 such a stupid thing."

9  
10 There is no evidence in the case refuting this  
11 testimony. Both of the prosecution's guesses are con-  
12 trary to the evidence.  
13

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23 796. T. 36,507  
24 797. T. 36,505  
25 798. Ibid.

265. Once again in summing up the facts  
1 surrounding the recommendations of TOJO and the instruc-  
2 tions to him that the September 6th Decision should be  
3 re-examined and that there should be cooperation be-  
4 tween the Army and Navy, the prosecution says, "As  
5 always there was no reference to the kind of agreement  
6 to be reached or policy to be adopted."<sup>799</sup> If this  
7 is the most that the prosecution can get out of this  
8 evidence we submit that the prosecution admits that  
9 it has failed to sustain its burden of proof that KIDO  
10 conspired to commit any of the acts set forth in the  
11 Indictment, because it charges that he conspired to  
12 commit the acts set forth therein, not "some kind of  
13 an agreement or policy."

266. The prosecution's question <sup>800</sup> on KIDO's  
15 belief that if the Emperor told TOJO to do something  
16 he would faithfully obey is why did KIDO not advise  
17 the Emperor to order TOJO not to make war. KIDO's  
18 belief that TOJO would faithfully obey the Emperor  
19 is corroborated by the testimony of MUTO. <sup>801</sup> The  
20 Imperial Command given to TOJO and OIKAWA and KIDO's  
21 statement to them that close cooperation should be had  
22 between the Navy and Army, and that the decision of  
23 (799. Par. JJ-75, Tr. 41,116  
24 800. Pros Arg. JJ-77, Tr. 41,116  
25 801. Tr. 33,165)

September 6th should be reviewed can be construed as  
nothing else but the Emperor's order to TOJO and  
OIKAWA not to plunge Japan into war.

267. Although in KIDO's summation the prosecu-  
tion refuses to accept KIDO's interpretation of these  
orders, in its individual summation against TOJO it  
does accept them and claims that TOJO did not examine  
the negotiations from a clean slate basis and instead  
"He, in fact, violated a solemn trust imposed upon  
him by the Emperor, when he was invested with the  
highest government position in the Empire\*\*\*."

802  
Compare this with the two guesses above mentioned.

268. The contention of the prosecution is  
that KIDO's recitation of KONOYE's message to him on  
the morning of October 17, 1941 wherein KONOYE approved  
of the recommendation of TOJO containing the provision  
that he strive for peace does not appear in any con-  
temporary document. Apparently it has overlooked the  
fact that KONOYE's own memoirs contained words to the  
same effect. 803 Furthermore, as shown above, the  
prosecution itself has construed the messages of the  
Emperor and KIDO to OIKAWA and to TOJO as "striving for  
peace" in its individual summation against TOJO. In  
(802. Pros. Arg. XX-62, Tr. 41,999  
803. Ix. 1148, Tr. 10,271)

view of this, the prosecution's question of why KIDO  
1 delivered these messages instead of the Emperor is  
2 of no moment, <sup>804</sup> and the question with respect to what  
3 inference OIKAWA could be expected to draw was answered  
4 by OIKAWA himself as quoted above. <sup>805</sup>

5 269. The corroborative evidence is over-  
6 whelming that TOJO was recommended as Prime Minister  
7 for purposes of peace and not war. <sup>806</sup>

8 270. KAYA testified to the conversation  
9 he had with TOJO before he accepted the position as  
10 Finance Minister. KAYA stated TOJO replied in the  
11 negative to his query as to whether he, TOJO, was  
12 decided on waging war against the United States. TOJO  
13 definitely stated that he intended to continue with  
14 the Japanese-American negotiations and exert his  
15 efforts toward an amicable settlement. He also told  
16 KAYA he would work toward a closer relationship between  
17 the Supreme Command and the Cabinet. KAYA was relieved  
18 to learn of TOJO's intentions. YUKI, Toyotaro testified  
19 that he had a conversation with KAYA which confirms  
20 KAYA's statement above. <sup>807</sup> YUKI was not cross-examined.

21 KOBAYASHI, Seizo also testified that he talked with  
22 KAYA and KAYA told him that TOJO had informed him that

23 (804. Par. JJ-77, Tr. 41,117

24 805. Infra. P. 220

25 806. Tr. 30,648-30,649

807. Tr. 30,557)

1 the United States-Japanese negotiations would be  
2 continued and that he was resolved to do his best to  
3 arrive at an understanding. <sup>808</sup> KOBAYASHI was not  
4 cross-examined. This evidence was also corroborated  
5 by GOTO, Ryunosuke. <sup>809</sup> Again no cross-examination.

6 271. TOGO testified that before he accepted  
7 the position as Foreign Minister he had a conversation  
8 with TOJO in which after hearing TOJO's explanation  
9 as to the downfall of the KONOYE Cabinet he said he  
10 would agree to enter the cabinet only if the Army con-  
11 sented to make considerable allowances in reviewing  
12 the question of troop stationing and re-examination  
13 of the other questions in the Japanese negotiations.

14 TOJO assured him that reconsideration might be under-  
15 taken. <sup>810</sup> SUZUKI, Tomin, an editorial writer from  
16 Yomiuri Shimbun, a prosecution witness, testified on  
17 cross-examination as to TOJO's intentions for peace  
18 when he offered the Foreign Ministership to TOGO. <sup>811</sup>  
19 TOGO's testimony on this point was also corroborated  
20 by TOMIYOSHI. <sup>812</sup>

21 272. The accused MUTO testified <sup>813</sup> that  
22 TOJO did not even dream that he would receive an order  
23 (808. Tr. 30,603  
24 809. Tr. 30,609  
25 810. Tr. 35,671-35,672  
811. Tr. 1235  
812. Tr. 35,524  
813. Tr. 33,167)

1 to form a cabinet. He stated that when TOJO was ordered  
2 to appear at the Palace, TOJO left his office feeling  
3 that because of the resignation en bloc of the Third  
4 KONOYE Cabinet he was to be berated by the Emperor  
5 and that he would be asked various questions by the  
6 Emperor and he went there prepared for this. The accused  
7 MUTO also testified that at the first Liaison Confer-  
8 ence after he formed his Cabinet, TOJO said in effect,  
9 "that the Liaison Conference, standing on a new  
10 position and without being bound by the Imperial Con-  
11 ference Decision of September 6th, will study ways  
12 and means of bringing about a settlement of the pending  
13 issues between Japan and the United States." This  
14 was confirmed by the witness YAMAMOTO, Kumaichi when  
15 he said:

16 "This intention of the new government  
17 was confirmed by Premier TOJO, who in the  
18 opening address at the first meeting of  
19 the Liaison Conference after the formation  
20 of his ministry said that the policy of the  
21 new cabinet would be to reconsider the problem  
22 without being bound by the decision of 6  
23 September, and asked the agreement thereto  
24 of the representatives of the High Command,  
25 (814. Tr. 33,172)

which was given." 815  
1   . . . 273. OIKAWA testified 816 that when he with-  
2 drew from the audience with the Emperor on the evening  
3 of October 17 he and General TOJO were seated alone  
4 in the waiting room and that he had a conversation  
5 with General TOJO, the general outline of which was  
6 the firmness of TOJO's resolution to throw away all  
7 obstacles which had been obstructing their path in the  
8 past, to wipe the slate clean and to start out afresh  
9 in line with the words which he had just received  
10 from the Emperor. OIKAWA also stated that he received  
11 an impression that TOJO did have a strong resolve to  
12 carry that out. OIKAWA also testified 817 on cross-  
13 examination that the decision of wiping the slate  
14 clean did not mean that an early decision for war would  
15 be made but it meant that the decision of the Imperial  
16 Conference of September 6th would be scrapped, and  
17 that viewing the international situation anew a new  
18 approach would be made to the problem. He significantly  
19 stated, "At that time no one had any idea of waging  
20 a war within the matter of a few weeks simply by the  
21 fact of wiping the slate clean." 818  
22  
23 815. Tr. 25,921  
24 816. Tr. 33,345-33,346  
25 817. Tr. 34,591-34,592  
26 818. Ibid.

815. Tr. 25,921  
816. Tr. 33,345-33,346  
817. Tr. 34,591-34,592  
818. Ibid.

which was given." <sup>815</sup>

273. OIKAWA testified <sup>816</sup> that when he withdrew from the audience with the Emperor on the evening of October 17 he and General TOJO were seated alone in the waiting room and that he had a conversation with General TOJO, the general outline of which was the firmness of TOJO's resolution to throw away all obstacles which had been obstructing their path in the past, to wipe the slate clean and to start out afresh in line with the words which he had just received from the Emperor. OIKAWA also stated that he received an impression that TOJO did have a strong resolve to carry that out. OIKAWA also testified <sup>817</sup> on cross-examination that the decision of wiping the slate clean did not mean that an early decision for war would be made but it meant that the decision of the Imperial Conference of September 6th would be scrapped, and that viewing the international situation anew a new approach would be made to the problem. He significantly stated, "At that time no one had any idea of waging a war within the matter of a few weeks simply by the <sup>818</sup> fact of wiping the slate clean."

23 815. Tr. 25,921

24 816. Tr. 33,345-33,346

25 817. Tr. 34,591-34,592

818. Ibid.

274. The accused SUZUKI testified that he  
1 really believed that General TOJO would be able to  
2 check the war faction. At that time General TOJO  
3 did not necessarily seem to advocate war on his own  
4 but that there seemed to be some hidden power pushing  
5 this war agitation.  
819

275. SHIMADA also testified of a conversation  
6 he had with TOJO of his intentions to start from  
7 scratch with respect to Japanese-United States negoti-  
8 ations. SHIMADA did not have the impression that  
9 he was joining a war cabinet.  
10 820

276. TOJO admitted on cross-examination that  
11 shortly after he received the Imperial Mandate to form  
12 a cabinet he told his secretary Colonel AKAMATSU that  
13 he was not the TOJO of former times, but that since  
14 he was appointed to the Premiership he would do his  
15 best to realize the Emperor's wishes. As was said  
16 821  
17 by the witness SHIBA "The TOJO Cabinet then decided  
18 822  
19 to scrap all previous understandings and start afresh\*\*\*".

277. Since the prosecution with the combined  
20 acumen of eleven nations at hand, almost seven years  
21 after the event and after two years of intensive study  
22 of the conditions, is baffled in its efforts to  
23  
24 (819. Tr. 35,808  
25 820. Tr. 34,654-34,655  
821. Tr. 36,507  
822. Tr. 33,320-321)

1 and will be composed primarily of military  
2 men. The new Cabinet may even appear to  
3 be extremist to persons unacquainted with  
4 the set-up of the various groups within  
5 the Japanese Army and other factions  
6 having influence in the Government. However,  
7 Prince KONOYE entertains the hope that  
8 the Ambassador will stress to the Govern-  
9 ment of the United States that too great  
10 importance should not be given to the  
11 outward appearance of the new Cabinet.  
12 Prince KONOYE also desires the Ambassador  
13 to understand that he would not have tendered  
14 his resignation at this moment without hav-  
15 ing convinced himself that the succeeding  
16 Prime Minister would be equally desirous 823  
17 of adjusting Japanese-American relations."

18  
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24 (823. Tr. 25,858-25,859)  
25

1 determine a person more suitable than TOJO how is it  
2 in any position to criticize KIDO, let alone ask for  
3 his life.

4       278. We have no desire to criticize the  
5 prosecution for being baffled because it required a  
6 miracle at that time to appoint some one who would be  
7 able to control the militarists and continue the nego-  
8 tiations with America. This was so pointedly recorded  
9 by Counselor Dooman of the American Embassy in Japan  
10 in a memorandum dated October 17, 1941:

11       "Prince KONOYE about a week ago had de-  
12 cided to resign in view of the internal situ-  
13 ation in Japan. At that time it appeared  
14 inevitable that the succeeding cabinet would  
15 be one of an extremist nature but Prince  
16 KONOYE through intensive effort and 'by a  
17 miracle' had in recent days been successful  
18 in ensuring that the government to succeed him  
19 would be composed of persons who did not subscribe  
20 to the principle that the conversations with the  
21 United States should be broken off.

22       "No Japanese civilian statesman will  
23 undertake the task in which Prince KONOYE  
24 has failed and consequently the succeeding  
25 cabinet must be headed by an Army officer

1 and will be composed primarily of military  
2 men. The new Cabinet may even appear to  
3 be extremist to persons unacquainted with  
4 the set-up of the various groups within  
5 the Japanese Army and other factions  
6 having influence in the Government. However,  
7 Prince KONOYE entertains the hope that  
8 the Ambassador will stress to the Govern-  
9 ment of the United States that too great  
10 importance should not be given to the  
11 outward appearance of the new Cabinet.

12 Prince KONOYE also desires the Ambassador  
13 to understand that he would not have tendered  
14 his resignation at this moment without hav-  
15 ing convinced himself that the succeeding  
16 Prime Minister would be equally desirous 823  
17 of adjusting Japanese-American relations."

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24 (823. Tr. 25,858-25,859)  
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279. As shown one may read KIDO's November 1941 historical portrayal of the events leading up to the appointment of TOJO, and all the other contemporary documents, and oral testimony in vain for any indication that TOJO was appointed for the purpose of waging war with America. After consultation with the Senior Statesmen KIDO personally assumed the responsibility to the Emperor of making the recommendation and it would be far fetched to argue that any criminal responsibility attached from such assumption. There can be no question but that conditions in Japan were exceedingly critical at that time with the Allied pressure from the outside, both economic and military, and the younger militarists in Japan pressing for war and the navy undecided. It is no wonder that when KIDO reported to the Emperor on October 20, 1941, that ". . . one mistaken step taken in the present cabinet change might have inadvertently plunged us into war" and that the appointment of TOJO was in his belief". . . the only way of giving a new turn to the situation. . ." His Majesty replied "He who will not go into the tiger's den will not get the tiger cub." The Emperor too realized "nothing ventured, nothing gained." The

824. Ex. 1156, T. 10295; 825. Ibid. 826. Ibid.  
827. Aff. par. 226, T. 31027.

1 question might well be asked -- How long would a  
2 person like KIDO have lasted in the Nazi Regime?

## XII.

(G) Events Prior to Pearl Harbor.

280. There is an abundance of evidence in  
this case concerning the effort TOJO and his cabinet  
made to wipe the slate clean and effect peace between  
the United States and Japan. KIDO of course had nothing  
to do with these steps so we will mention them here  
only briefly. Among other things TOJO undertook an  
exhaustive study at the Liaison Conferences during  
the latter part of October of the possibilities of  
effecting peace negotiations with America; the  
preparation and submission of proposals A and B;  
the dispatch of KURUSU to America; and TOJO even  
went so far as to call, upon approval of the Emperor,  
a meeting of the Military Councillors. This was the  
first time it was called since the establishment of  
the Military Councillor system in 1903. TOJO  
testified to KIDO's elation upon hearing about the  
decision to withdraw the troops from South Indo  
China. The situation gradually changed so that it

828. T. 36316; 829. T. 36326; 830. T. 36347.  
831. T. 36329 et seq; 832. T. 36519 - 36520.

1      became necessary for the government to prepare for  
2    833.  
3      war and for peace, as consideration had to be  
4      paid to the worst eventuality of a rupture in negotia-  
5      tions.

6      281. The Imperial Conference of November  
7      5 came to pass at which Japan's policy towards the  
8      United States, England and the Netherlands was decided  
9      according to the principles studied by the Liaison  
10     Conferences. KIDO of course had no part in this:  
11     At that time a very ugly transformation came over the  
12     834. country. The guard around KIDO's house was  
13     increased from 10 to 15 policemen in the day time and  
14     at night was increased from 25 to 35. He had to follow  
15     a different route every day in driving to and from his  
16     office. The reason for this is quite obvious.  
17     835. The testimony is uncontradicted that KIDO was regarded  
18     as pro-British and pro-American. We need refer the  
19     Tribunal only to the testimony of former German  
20     Ambassador Ott and the accused MATSUI. Ott stated:  
21     836. "The attitude of the Reich Government toward  
22     Marquis KIDO was one of distrust. He was considered  
23     833. Aff. par. 230, T. 31030.  
24     834. Aff. par. 231, T. 31031.  
25     835. Aff. par. 232, T. 31032.  
26     836. Ibid.  
27     837. T. 34908.

837.

MATSUDAIRA'S views,

Berlin."

No wonder KIDO never received a decoration  
from the German Government. MATSUI's statement on  
cross-examination was as follows:

" . . . But on the whole, from my own obser-  
vation, I felt that the Lord Keeper was somewhat more  
pro-British and pro-American than such people as  
myself. But at the same time he was a patriotic  
Japanese."

282. KIDO testified the solidarity of young  
military and naval officers became tightened with the  
result that an atmosphere was created in the fighting  
services themselves opposing the policy of the leaders  
of the army and navy for the adjustment of relations  
between Japan and America.

839. Fretful impatience was  
the order of the day. On November 19, 1941 KIDO had  
an audience with the Emperor.

840. KIDO counseled the  
Emperor at this time to strongly deprecate entering

838. T. 33920.  
839. Aff. par. 233, T. 31032.  
840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

283. The prosecution neither condemns nor  
commends KIDO for recommending that a meeting with  
the Senior Statesmen be held. It just misstates the  
procedure never happened.

843. The reason is obvious.  
KIDO thought as a last resort the Senior Statesmen  
might be able to avert the crisis and avoid war. As  
shown in KIDO's Diary of November 26, 1941

841. Aff. par. 233, T. 31033.

842. Ex. 1181, T. 11143.

843. Par. JJ-80, T. 41119.

844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional  
excerpts Aff. par. 233, T. 31034 - 31035.

1 as belonging to the group which did not favor the  
2 improvement of the Japanese-German relations, primarily  
3 under the leadership of the Minister of the Imperial  
4 Household, MATSUDAIRA. I considered KIDO in line with  
5 MATSUDAIRA's views, and this feeling was shared in  
6 Berlin."

7 No wonder KIDO never received a decoration  
8 from the German Government. MATSUI's statement on  
9 cross-examination was as follows:

10 " . . . But on the whole, from my own obser-  
11 vation, I felt that the Lord Keeper was somewhat more  
12 pro-British and pro-American than such people as  
13 myself. But at the same time he was a patriotic  
14 Japanese."

15 282. KIDO testified the solidarity of young  
16 military and naval officers became tightened with the  
17 result that an atmosphere was created in the fighting  
18 services themselves opposing the policy of the leaders  
19 of the army and navy for the adjustment of relations  
20 between Japan and America. Fretful impatience was  
21 the order of the day. On November 19, 1941 KIDO had  
22 an audience with the Emperor. KIDO counseled the  
23 Emperor at this time to strongly deprecate entering  
24 838. T. 33920.  
25 839. Aff. par. 233, T. 31032.  
840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

1 into a state of war with the passing of the end of  
2 November just as if it were a matter of routine business  
3 and instead that the situation should be handled with  
4 a most cautious attitude as it was conceived that the  
5 negotiations with America by the end of November might  
6 be in one of various states. <sup>841.</sup> As the exhibit  
7 clearly shows, he further pointed out that by rushing  
8 into war, influence on the unification of public opinion  
9 would have an undesirable effect in the future and he  
10 advised the Emperor' . . . when the Premier solicits  
11 His Majesty's final decision, if circumstances require,  
12 the Premier should be ordered to hold the council in  
13 the Imperial presence with the participation therein  
14 of all the Senior Statesmen.<sup>842.</sup>

15 283. The prosecution neither condemns nor  
16 commends KIDO for recommending that a meeting with  
17 the Senior Statesmen be held. It just misstates the  
18 procedure never happened. <sup>843.</sup> The reason is obvious.  
19 KIDO thought as a last resort the Senior Statesmen  
20 might be able to avert the crisis and avoid war. As  
21 shown in KIDO's Diary of November 26, 1941 <sup>844.</sup> the

22  
23 841. Aff. par. 233, T. 31033.  
24 842. Ex. 1181, T. 11143.  
25 843. Par. JJ-80, T. 41119.  
26 844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional  
27 excerpts Aff. par. 233, T. 31034 - 31035.

Emperor approved of the conference with the Senior  
1 Statesmen" . . . which should be convened to have  
2 broader and more complete discussions on the matter."  
3 In reply to the Emperor's statement on November 26, 1941  
4 regarding the outlook of the Japanese-American talks  
5 and fears that the worst might come to the worse, KIDO  
6 replied:

7 "Once the final decision is made this time  
8 it would truly be the last and irretrievably final  
9 one. Thus if there should be any doubt or any better  
10 idea to surmount the difficulties in your Majesty's  
11 mind, I pray that your Majesty be pleased to elucidate  
12 the same without the least reserve and appropriate  
13 steps which your Majesty might not repent of afterwards.  
14 I therefore pray that Your Majesty command the Premier  
15 without reserve."

17 284. We submit that this speaks for itself.  
18 The usual guess, this time extremely brief, of the  
19 prosecution's interpretation of both of these diary  
20 entries of November 19, 1941 and November 26, 1941 is  
21 grossly distorted. The proper interpretation is  
22 just the opposite of the prosecution's and clearly  
23 demonstrates KIDO's innocence of having a criminal  
24 mind. There was no cross-examination of KIDO on these  
25 845. Part JJ-78, T. 41778.

entries or his testimony regarding them, and therefore  
1 was not contested. On its face the diary entry of  
2 November 26, 1941 clearly shows KIDO's prayer that  
3 the Premier be commanded without reserve. It speaks  
4 for itself.

5 285. Upon receipt of Secretary Hull's note  
6 of November 26, 1941 it was felt that the American  
7 proposal was so strong as to be entirely beyond the  
8 pale of the contingencies which were anticipated by  
9 846. KIDO. The government said that the Hull note was  
10 847. tantamount to an ultimatum. The accused KAYA  
11 848.  
12 said: "It was a big blow to all."

13 286. On the morning of November 27, 1941,  
14 a telegram from NOMURA and KURUSU dated November 26,  
15 1941 was received in the Foreign Ministry. In it  
16 substantially it was suggested that if conditions  
17 do not change negotiations must be given up by them  
18 and that they were humiliated at the lack of influence  
19 and in this case the only way to bridge the difficulty  
20 was to let President Roosevelt cable the Emperor and  
21 849. ask the Emperor to answer. This request was  
22 conditioned on obtaining the permission from the Foreign  
23 846. Ex. 1181, as cor. Lang. Sec. 11143.  
24 847. Aff. par. 231, T. 31031.  
25 848. T. 30655.  
849. Ex. 2249, T. 16197.

Office. KIDO in his affidavit said he never saw this  
850.

1 telegram.

2 287. This is confirmed by TOGO's admission

3 on cross-examination that he never showed the telegram

4 to KIDO and KIDO told him that he had not seen the

5 851. telegram. <sup>852</sup> KIDO testified that he had no

6 recollection of talking to Foreign Minister TOGO about

7 the telegram. KIDO further stated that he does not

8 deny that TOGO spoke to him but if he did it must

9 have been after receipt of Secretary of State Hull's

10 message of the same date which had reached Japan and

11 created a changed situation minimizing the importance

12 of the telegram from NOMURA. He further stated that

13 he never had any weighty conference with TOGO about

14 it and that if TOGO spoke to him it must have been very

15 slightly due to the conditional nature of the telegram.

16 KIDO had nothing to do with Foreign Minister TOGO's

17 853. answering telegram of November 28, 1941. KIDO

18 was not cross-examined by anyone with respect to either

19 of these telegrams.

20 288. According to the testimony of TOGO,

21 elicited on both direct and cross-examination, Secretary

22 850. Aff. par. 234, T. 31036.

23 851. T. 35820, 35821.

24 852. Aff. par. 234, T. 31036.

25 853. Ex. 1193, T. 10442 - 10443.

Hull's note and the telegram of November 26th from  
1 Ambassadors NOMURA and KURUSU arrived almost simultan-  
2 eously on the morning of the 27th. <sup>854.</sup> He also stated  
3 on direct examination that the two ambassadors had no  
4 confidence in the success of the procedure outlined in  
5 their telegram of the 26th after receipt of Secretary  
6 Hull's note because in their telegram dispatched  
7 shortly after the receipt of the note they reported  
8 that there was no prospect of reaching an agreement and  
9 advised measures to be taken in case freedom of action  
10 <sup>855.</sup> was resorted to.

12 289. TOGO also testified on direct examination  
13 that on the 28th of November he called on the Premier  
14 fifteen minutes before the cabinet meeting which was  
15 <sup>856</sup> scheduled to convene at 10 a.m. He testified that  
16 the talk with the Premier and with SHIMADA who was  
17 also present was about the Ambassador's recommendation  
18 <sup>857</sup> as well as the Hull Note. He explained to them the  
19 <sup>858</sup> contents of this message. "Both the Premier and the  
20 Navy Minister were of opinion that there was absolutely  
21 no hope of a solution by such means as that proposed  
22 <sup>859</sup> by the Ambassadors." TOGO then went to the cabinet

24 854. Tr. 35,818.

25 855. Tr. 35,705, Ex. 2949.

856. Tr. 35,706-35,707.

857. Tr. 35,707.

858. Ibid.

859. Ibid.

meeting and left before its completion and he says that  
1 before being received in audience he explained to KIDO  
2 about the Hull Note and talked with him concerning the  
3 two Ambassadors' recommendation. <sup>860</sup> YAMAMOTO, a Foreign  
4 Office official, sides with TOGO in saying TOGO consulted  
5 KIDO. <sup>861</sup> TOGO further said that KIDO was of the opinion  
6 that the Ambassadors' recommendation was insufficient  
7 to save the situation. <sup>862</sup>

8        290. The prosecution erroneously claims that  
9 KIDO told TOGO that "If the conditions suggested by  
10 the Ambassadors were accepted, the result might be  
11 civil war." <sup>863</sup> The prosecution has misconstrued TOGO's  
12 testimony. It is clear that TOGO was referring to  
13 the Hull Note when he says that KIDO told him that  
14 " \* \* \* if its conditions were adopted as the basis  
15 of a settlement, the result might be civil war."<sup>864</sup>  
16 TOGO admitted on cross-examination that there was a  
17 discussion about the Hull Note at the cabinet meeting  
18 and that the government had no confidence in its  
19 realization and that applied to both the Hull Note and  
20 the telegram from Ambassadors NOMURA and KURUSU.<sup>865</sup>

21  
22  
23 860. Ibid.

24 861. Tr. 26,064-26,065.

25 862. Tr. 35,707.

863. Par. JJ-79, Tr. 41,118.

864. Tr. 35,707, 35,708.

865. Tr. 35,818, 35,819.

It is important to note that TOGO testified that the  
1 government's decision on the Hull Note and on the  
2 telegram from NOMURA and KURUSU was made before TOGO  
3 spoke to KIDO. Thus KIDO had no opportunity to  
4 advise the Emperor, as the government had already made  
5 its decision. TOGO also testified on cross-examination  
6 that when he had an audience with the Emperor after  
7 he spoke with KIDO he spoke to His Majesty about the  
8 Hull Note but did not speak to His Majesty about the  
9 telegram from NOMURA and KURUSU.<sup>866</sup> TOGO also admitted  
10 that the NOMURA-KURUSU telegram was in the nature of  
11 a diplomatic negotiation. He also admitted that it was  
12 his duty as Foreign Minister under the constitution and  
13 ordinances of Japan, that he had personal responsibility  
14 with respect to the duties of his office.<sup>867</sup>

15 . 291. Notwithstanding this, he claimed it  
16 was up to the government to decide whether the proposal  
17 contained in the Ambassadors' telegram should be adopted  
18 or not. The telegram however was conditioned upon  
19 approval of the Foreign Office. Although TOGO said  
20 that the government had no confidence in the realization  
21 of the suggestion of the Ambassadors he admitted later  
22 <sup>870</sup>

23 866. Tr. 35,819.

24 867. Tr. 35,822.

25 868. Tr. 35,822.

869. Tr. 35,822-35,823.

870. Tr. 35,818, 35,819.

on cross-examination that it was not submitted to the cabinet; \*\*\* since the matter had been agreed upon among the Prime Minister, the Navy Minister and the Foreign Minister the matter need not be presented to the cabinet, and it would be perfectly all right to say that this agreement of views represented the views of the government.<sup>871</sup> From this it is apparent KIDO had no responsibility.

292. Although TOGO professed no desire to shove responsibility to KIDO he stated that if KIDO believed steps should be taken in opposition to the views of the government it would have been all right for him to have suggested it to the Emperor. Apparently this statement was made to excuse TOGO's report to the Emperor of the government's decision on the Hull Note before KIDO had an opportunity to speak with the Emperor. It is quite apparent that TOGO was not familiar with the duties of the Lord Keeper of the Privy Seal as his testimony is contrary to all the other evidence submitted on the responsibility of the Lord Keeper of the Privy Seal to the Emperor. Once the government had arrived at a decision it was improper

871. Tr. 35,823-35,824.

872. Tr. 35,825.

873. Tr. 35,824.

874. Infra - p. 116-130.

for the Lord Keeper of the Privy Seal to advise the  
Emperor to take steps contrary to the decision of the  
government. As TOJO said "Summing it up, the Emperor  
had no free choice from the governmental structure  
setting up the cabinet and the Supreme Command. He  
was not in a position to reject the recommendations and  
advice of the cabinet and High Command. His wishes or  
hopes were necessarily assisted by the Lord Keeper,  
and even these hopes when expressed finally were to be  
scrutinized by the cabinet or the Supreme Command.  
Recommendations and suggestions after this careful  
examination had to be approved by the Emperor and never  
to be rejected. \* \* \* These facts being what they are,  
it was solely upon the cabinet and the Supreme Command  
that the responsibility lay for the political, dip-  
lomatic and military affairs of the nation." He also  
said the Emperor has never rejected the government's  
decision on any matter in the entire history of new  
Japan.

293. On September 29, 1941, KIDO in his  
diary related a talk he had with HARA, President of  
the Privy Council, about holding a final Imperial

875. Aff. par. 222, Tr. 31,024.

876. Tr. 36,383.

877. Tr. 36,382.

878. Ex. 1142, Aff. par. 197, Tr. 30,958.

Conference before arriving at a decision on war,  
1 making it less formal and including the Senior  
2 Statesmen in the council. If we understand the  
3 prosecution's summation correctly it has misstated to  
4 the Tribunal that this was not followed as testified  
5 to by KIDO. The meeting was held, it was less formal  
6 than usual and the Senior Statesmen were there.  
7 A plethora of evidence has been produced showing this  
8 and it is neither contradicted nor impeached. The  
9 Senior Statesmen met at a conference at the palace with  
10 the government, they listened to a report given by  
11 the Prime Minister on the development of negotiations  
12 with America. This meeting was not attended by the  
13 Emperor nor by KIDO. It recessed at 1 p.m. at which  
14 time the Senior Statesmen, some cabinet members and  
15 KIDO had luncheon with the Emperor. After luncheon  
16 the Emperor had a one-hour meeting from 2 to 3 with  
17 the Senior Statesmen at which TOJO and others from  
18 the government were present. KIDO was also present  
19 but did not participate or say anything at the meet-  
20 ing. The Senior Statesmen gave their views to the  
21 Emperor and at the conclusion of this meeting when  
22 the Emperor and KIDO withdrew the Senior Statesmen  
23

24 879. Aff. par. 236, Tr. 31,037; Aff. par. 237,  
25 Tr. 31,038, Ex. 1196 as revised by Lang. Sec.  
Tr. 16,187-16,198.

resumed their meeting with the government until  
1 4 p.m. after which KIDO was advised by Prince KONOYE  
2 that no decision was made at any of the two meetings  
3 between the Senior Statesmen and the representatives  
4 of the government. KIDO so testified. His diary  
5 records it; OKADA corroborated this; SHIMADA  
6 corroborated it; TOJO corroborated it. It is  
7 also corroborated in TOJO interrogations. There is  
8 no evidence to the contrary. That part of the con-  
9 ference at which the Emperor and KIDO were present is  
10 886  
11 fully recorded.

12

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880. Aff. par. 237, Tr. 31,038.  
23 881. Ex. 1196 as revised Tr. 16,187-16,198.  
24 882. Tr. 29,262.  
883. Tr. 34,795.  
25 884. Tr. 36,508.  
885. Ex. 1158-A, Tr. 10,513-10,515.  
886. Aff. par. 237, Tr. 31,038.

293-a. The reason why the prosecution only  
1 devotes six lines of its individual summation against  
2 KIDO to the meeting of November 29, 1941, and  
3 unwarrantedly states that KIDO's statement that the  
4 procedure he talked over with HARA was not followed  
5 is quite apparent when one considers the fact that  
6 the prosecution charged in Appendix E of the Indict-  
7 ment that KIDO was "present at and concurred in the  
8 decisions taken at \* \* \* the conference \* \* \* of  
9 November 29, 1941 (ex-premiers)" and "\* \* \* which deci-  
10 sions prepared for and led to unlawful war on 7/8 Dec-  
11 ember 1941." (The only other conference to which a  
12 similar charge is made against KIDO is the one of  
13 October 17, 1941, which has been considered heretofore.)  
14 Naturally, as all the evidence shows no decision was  
15 made at this conference of November 29, 1941, and  
16 that KIDO did not even say one word there, the prosecu-  
17 tion wants to ignore it.  
18

294. On November 30, 1941, KIDO was summoned  
20 by the Emperor and told that Prince TAKAMATSU had told  
21 the Emperor in substance that the navy appeared to  
22 be opposed to war and Prince TAKAMATSU had wanted to  
23 know what was the real intention of the navy. KIDO  
24 replied " \* \* \* that His Majesty's decision is of  
25 887. Par. JJ-80, Tr. 41,119.

such gravity that, once decided, it could not later  
1 be retracted. Hence it is felt that if there is the  
2 least uncertainty every possible precaution should be  
3 taken to do that to which His Majesty can give assent.<sup>888</sup>"  
4

Are these the words of a conspirator, an  
5 aggressor at heart? The evidence is that KIDO was  
6 not a war monger.<sup>889</sup>  
7

8 295. KIDO suggested to the Emperor "that  
9 the Navy Minister and the Chief of the Naval General  
10 Staff be called at once and the true intention of the  
11 Navy be ascertained, and that the matter be conveyed  
12 frankly to the Premier also."  
13

14 This is fully related in his diary. The  
15 Premier, who was planning to hold an Imperial Con-  
16 ference the next day, saw the Emperor a few minutes  
17 later and requested that it be called but His Majesty  
18 withheld his consent.<sup>890</sup> After the Navy Minister and  
19 Chief of Naval General Staff had conferred with the  
20 Emperor, KIDO was summoned in audience and the  
21 Emperor advised him that these officials had answered  
22 his questions with considerable confidence and that

23 888. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.

24 Tr. 12,480.

25 889. Tr. 35,800-801.

890. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.

Tr. 12,480.

891. Aff. par. 239, Tr. 31,045.

KIDO should instruct TOJO to proceed as planned.

892

1           296. As KIDO stated he was told to advise  
2           the Premier to proceed with the Imperial Conference  
3           the next day which he did. This is confirmed by TOJO  
4           893  
5           who testified that KIDO called him by telephone and  
6           stated that the Emperor allowed the Imperial Conference  
7           to be held on December 1 as slated. This was also  
8           corroborated by SHIMADA on cross-examination by the  
9           894  
prosecution.

10          297. The prosecution guess as to what the  
11          895  
Emperor's instructions were is not borne out by the  
12          testimony. As testified to by Admiral SHIMADA:

13          "Hence, Admiral NAGANO and I on November 30  
14          told the Emperor that the navy had made adequate pre-  
15          parations. The question of confidence in the ultimate  
16          outcome of the war was not the theme of our conversa-  
17          tion but only whether we were confident of the prepa-  
18          896  
rations which the navy had made."

20          In so far as KIDO is concerned, this diary  
21          entry of November 30, 1941, definitely establishes  
22          that KIDO did not participate in decisions of the  
23          government or High Command.

24          892. Ex. 1198, Tr. 10,468 as Cor. Lang Sec. Tr. 12,480.  
25          893. Tr. 36,371.  
894. Tr. 34,699.  
895. Par. JJ-80, Tr. 41,119.  
896. Tr. 34,667.

298. The prosecution criticizes KIDO for  
1 offering no further advice to avert war after the  
2 Imperial Conference of December 1. This is not under-  
3 standable. The evidence shows that he did his utmost  
4 to avert it before the final decision was made and when  
5 it was finally made by the Government and High Command  
6 on December 1, 1941, he was powerless. It must be  
7 remembered that KIDO was not an advisor to the Throne  
8 on these matters. Every one of the fourteen ministers  
9 of state of the cabinet and the Premier had access to  
10 and advised the Emperor. The officials of the High  
11 Command gave direct advice to the Emperor. The  
12 Imperial Household Minister also gave advice to the  
13 Emperor. Each one of these advisors was charged with  
14 the duty and responsibility of advising the Emperor on  
15 matters pertaining to his respective office. The  
16 prosecution seems to overlook this and tries to create  
17 the impression that KIDO was responsible for all this  
18 advice. Furthermore, the undisputed evidence is that  
19 with respect to matters falling within the sphere of  
20 the High Command under Article 11 of the Constitution  
21 the Lord Keeper of the Privy Seal had no authority to  
22 interfere,<sup>897</sup> and he did not interfere. TOJO testified  
23 that he did not think that the Lord Keeper listened to  
24  
25 897. Tr. 36,510.

1 to the Emperor's desires in this respect nor gave his  
2 advice. As TOJO further stated, "Cabinet decisions,  
3 as a matter of course, were made on the responsibility  
4 of the members of the cabinet and the decisions of  
5 the Supreme Command were made on the responsibility  
6 of the members of the Supreme Command; and there was  
7 no space for any other person to interfere, and other  
8 people naturally includes the Lord Keeper of the  
9 898  
Privy Seal."

10 299. The prosecution's argument also over-  
11 looks the testimony of SUZUKI who stated it was neces-  
12 sary for the Prime Minister to get the agreements of  
13 the Ministers of War, Navy and Foreign Affairs to  
14 have the Emperor say he did not want war; that it  
15 was only the duty of the Lord Keeper of the Privy  
16 Seal to have such advice in case an inquiry was put  
17 900  
to him by the Emperor.

18 300. On the morning of December 8, 1941, as  
19 shown in KIDO's diary, at 12:40 a.m. Foreign Minister  
20 TOGO telephoned KIDO and told him that Ambassador Grew  
21 had brought to him a telegram from President Roosevelt  
22 addressed to the Emperor. He asked KIDO how the  
23 901  
message should be handled. TOGO testified on direct  
24

25 898. Tr. 36,511.

899. Tr. 35,327.

900. Tr. 35,330-35,331.

901. Ex. 1239 as cor Lang. Sec. Tr. 16,192.

examination that he first knew the contents of the  
1 message about 12:30 a.m. when Ambassador Grew called  
2 <sup>902</sup> on him. TOGO testified on cross-examination he first  
3 called MATSUDAIRA, Tsuneo, Imperial Household Minister,  
4 about what procedure should be followed with respect  
5 <sup>903</sup> to the telegram. TOGO stated that MATSUDAIRA advised  
6 him that he should talk with the Lord Keeper of the  
7 Privy Seal and that TOGO then called KIDO on the tele-  
8 <sup>904</sup> phone. TOGO further stated on cross-examination  
9 that MATSUDAIRA did not ask him any questions regard-  
10 <sup>905</sup> ing the contents of the telegram. TOGO further testi-  
11 fied on direct examination that when he spoke with  
12 KIDO on the telephone KIDO suggested that TOGO consult  
13 the Premier, and KIDO also said that the Emperor would  
14 <sup>906</sup> receive him even at such a time.

16 301. On cross-examination TOGO admitted  
17 that he did not tell KIDO the contents of the telegram  
18 over the telephone nor did KIDO ask him. <sup>907</sup> TOGO fur-  
19 ther testified that he had no recollection that KIDO  
20 did anything whatsoever to obstruct an interview  
21 <sup>908</sup> between him and the Emperor that morning. As a matter

23 902. Tr. 35,727.  
24 903. Tr. 35,794, 35,795, 35,796.

25 904. Tr. 35,728.  
905. Tr. 35,796.  
906. Tr. 35,728.  
907. Tr. 35,797.  
908. Tr. 35,798.

of fact, KIDO suggested it.

909. Ex. 1239 as cor. Lang. Sec. Tr. 16, 192.

910. Ibid.

911. Aff. par. 242, Tr. 31,049.  
912. Tr. 31,049.

912. Tr. 31,605.  
913. Ibid.

913. Ibid.  
914. Ibid

914. Ibid. 916. Tr. 31,609.  
915. Ibid. 917. Tr. 31,609.

100 1829.

as it was improper for him to be received in audience  
1 together with a minister of state reporting to the  
Emperor on matters under his jurisdiction. 918  
2 KIDO  
3 waited until TOGO had completed his audience but TOGO  
4 went home. When KIDO became aware of that and the  
5 fact that the Emperor had retired KIDO went home. 919

6 303. In his direct testimony TOGO said before  
7 he had an audience with the Emperor he had a three-  
8 or four-minute talk with KIDO " \* \* \* telling him the  
9 contents of the telegram. \* \* \* " 920 If there was more  
10 to this conversation TOGO failed to reveal it in his  
11 direct testimony. On cross-examination when TOGO  
12 was asked if he had told KIDO what TOJO had told him  
13 he said: "KIDO, first of all, gave me his own opinion  
14 and then asked me what TOJO's opinion was, to which  
15 question I said that this opinion was the same as  
16 yours." 921 It is to be noted that here TOGO says KIDO  
17 expressed his opinion "first of all," which can only  
18 mean one thing -- to a diplomat accustomed to choosing  
19 correct words -- "before anything else was said." In  
20 other words, before he told KIDO the contents of the  
21 telegram, as he said he did on direct, KIDO expressed  
22

918. Tr. 31,608.

919. Tr. 31,610.

920. Tr. 35,729.

921. Tr. 35,828, 35,829.

his opinion. If the first statement KIDO made was  
1 to give his own opinion then there would have been no  
2 necessity for TOGO to have told him the contents of  
3 the telegram because KIDO's opinion would naturally  
4 have had to be based on knowledge of the contents of  
5 the telegram.

304. On cross-examination by the prosecution,  
TOGO admitted that in the previous telephone conver-  
sation with KIDO "It did not seem that he knew any-  
thing about the contents of the message." As TOGO  
also admitted that he did not tell KIDO the contents  
of the telegram over the telephone nor did KIDO ask  
him, it is thus difficult to understand how KIDO knew  
the contents and was able to give his opinion before  
being advised of the contents by TOGO if TOGO is to  
be believed that KIDO gave his opinion "first of all."  
Apparently TOGO was the only one who had the trans-  
lation of the telegram.

20               305. On cross-examination by counsel for  
21 KIDO, after TOGO had stated that KIDO, first of all,  
22 gave him his own opinion, TOGO was then asked if he  
23 showed KIDO President Roosevelt's telegram. He admitted  
24 that he had the translation of the message from

922. Tr. 35,874.  
923. Tr. 35,797.  
924. Tr. 35,728.

1 President Roosevelt in his hand " \* \* \* and I spoke to  
2 him about the contents of the telegram." He did not  
3 show the telegram to KIDO, and " \* \* \* nor was it  
4 necessary for me to show it to him." In other words,  
5 it is quite apparent that TOGO did not consider KIDO  
6 of sufficient importance to show him the telegram. TOGO  
7 admits that the Chamberlain came in announcing that the  
8 Emperor was in waiting.  
9

10 306. TOGO, over the weekend, after he had  
11 an opportunity to reflect, early on Monday morning,  
12 December 22, 1947, when the prosecution called his atten-  
13 tion to his answer on cross-examination by KIDO's coun-  
14 sel that "KIDO, first of all, gave me his own opinion  
15 and then asked me what TOJO's opinion was, to which  
16 question I said that his opinion was the same as yours,"  
17 stated that this conversation took place after TOGO had  
18 told KIDO the contents of the message. We submit that  
19 this explanation conflicts with his previous statement  
20 that KIDO expressed his opinion "first of all."

21  
22  
23  
24 925. Tr. 35,829.  
25 926. Tr. 35,829.  
927. Tr. 35,829.  
928. Ibid.

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307. Since TOGO has stated that his conversation with TOJO about the telegram had lasted between fifteen and twenty minutes and his subsequent conversation with the Emperor had lasted approximately 15 minutes, we submit it was impossible for TOGO to have repeated the contents of the message, obtained KIDO's opinion and repeated TOJO's opinion to KIDO, all within the space of "a minute or two" as testified to by KIDO or "within 3 or 4 minutes" as testified to by TOGO. An examination of the length of the document also substantiates this. Certainly the discussion of the reply would not account for the difference in time.

308. We also wish to point out that in its summation of TOGO's evidence the prosecution has stated that both KIDO and TOGO agreed that TOGO should see the Emperor and both agreed to the evasive reply which TOGO had drawn up. The latter statement is directly opposite to the evidence. TOGO specifically stated on cross-examination by the prosecution that he did not tell KIDO "\*\*\*\*that the draft of the reply had been decided upon." TOGO further stated that the agreement of views on the draft reply was between TOGO and TOJO. There is no evidence KIDO knew what

929. T. 35,827.

930. T. 35,729.

931. Par. WW-37, T. 41,936.

932. T. 35,901.

933. Ibid.

1           the draft was and no evidence that he even knew a  
2           draft existed.

3           309. That TOGO considered KIDO's position  
4           unimportant is further demonstrated by TOGO's testimony  
5           on cross-examination by the prosecution that TOGO  
6           never even mentioned to the Emperor that he had spoken  
7           934       to KIDO about the matter. It is also demonstrated  
8           by the fact that TOGO testified he suggested the draft  
9           of the Emperor's reply to the Emperor, and obtained  
10          the Emperor's consent at that meeting, well knowing  
11          that he had never discussed the reply with KIDO and  
12          that KIDO had had no opportunity to discuss the reply  
13          935       with the Emperor. He admits that he never talked  
14          to KIDO about the reply and even went so far as to say  
15          he did not think it was necessary for him to give  
16          936       KIDO any additional explanation.

17           310. The prosecution confronted TOGO with  
18          a document from the Foreign Office entitled "Particulars  
19          937       Regarding Cordial Message from President Roosevelt,"  
20          938       written sometime in 1942. It was admitted in  
21          evidence and TOGO was examined at length on the contents  
22          of it. On cross-examination by the prosecution TOGO

23          934. T. 35,904.

24          935. T. 35,904, 35,905.

25          936. T. 35,907.

            937. T. 35,913.

            938. T. 36,121.

1 admitted that the document was prepared in the Foreign  
2 Office but he could not quite say that the entire  
3 contents of it were correct, and he did not order it  
4 prepared. <sup>939</sup> Although the document deals with the  
5 exact language used between TOGO and Ambassador Grew  
6 and it refers to what happened when TOGO had an  
7 audience with the Emperor, TOGO never admitted that he  
8 prepared the document. On cross-examination by the  
9 prosecution, he pointed out that there were some  
10 errors in the document, one of which was that it did  
11 not mention the fact that TOGO met KIDO on the morning  
12 of December 8th, 1941. <sup>940</sup> He overlooked another  
13 omission because on recross-examination he admitted  
14 that the document also did not mention the telephone  
15 conversation that he had with KIDO. <sup>941</sup> He also  
16 stated that "the mere fact that a personal pronoun 'I'  
17 is used here is not proof that I wrote it." <sup>942</sup>  
18 311. The prosecution also queried TOGO  
19 about a statement to one of the prosecutors on February  
20 22nd and 28th, 1946 which was signed on March 6th, 1946.  
21 There TOGO devoted two complete paragraphs to discussing  
22 what happened on the early morning of December 8th, 1941. <sup>943</sup>  
23  
24 939. T. 35,914.  
25 940. T. 35,921.  
941. T. 36,122.  
942. Ibid.  
943. T. 36,124.

1 When it was pointed out to TOGO that he had not  
2 mentioned the meeting he had with Marquis KIDO on  
3 the early morning of December 8th, TOGO said that the  
4 statement was prepared by Mr. Morgan, the investigator,  
5 in a resume form and that Mr. Morgan "at that time  
6 did not ask me any questions pertaining to my relations  
7 or connections with Marquis KIDO and so I did not tell  
8 him anything about that." That Mr. Morgan must  
9 have spoken to TOGO about his relations with KIDO is  
10 apparent because the document recites that he spoke to  
11 KIDO on the telephone that morning. And when reminded  
12 of this TOGO sidestepped saying: "It is the same thing."<sup>945</sup>

13 312. If the question of whose recollection  
14 on the morning of December 8th is correct - TOGO's or  
15 KIDO's has any importance - we refer to the testimony  
16 of MATSUDAIRA, Yasumasa who was Chief Secretary to  
17 KIDO and who was called and testified in TOGO's case.  
18 Counsel for TOGO objected to and tried to prevent  
19 MATSUDAIRA from testifying, although the prosecution  
20 did not object. The prosecution states that KIDO  
21 was contradicted on his recollection of the conversation  
22 he had with TOGO in the morning by MATSUDAIRA \*\*\*who  
23 says he heard the contents, though not the details,  
24

25 944. Ibid.

945. T. 36,124, 36,125.

946. T. 35,598, 35,597.

from KIDO on the same morning." 947 Apparently the  
prosecution overlooks the fact that one of MATSUDAIRA's  
answers was submitted to the Language Section and  
corrected. 948 MATSUDAIRA testified that he had a  
conversation with KIDO some time before noon on the  
morning of December 8th about the telegram, and "Marquis  
KIDO said that at that time he was not familiar with  
the details." During the course of this examination  
a bad interpretation of an answer gave rise to the  
question which immediately followed but the answers  
clearly show that KIDO told MATSUDAIRA that he was  
not familiar with the details nor of the contents of  
the telegram. The pertinent questions and answers  
originally given and as corrected appear below. 949

Although TOGO's counsel had tried to prevent MATSUDAIRA

947. Par. JJ-81, T. 41,120

948. T. 36,597.

949. T. 35,600 and as cor. Lang. Sec. T. 36,5

"Q: Tell us what you said to Marquis KIDO and  
what he said to you.

"A: Marquis KIDO said that at that time he was not  
familiar with the details.

"Q: Had you asked him what the details of the  
telegram were?

"A: Well, I heard about the contents of the telegram -

"Correction: I heard what the contents of the  
telegram were about."

This corrected answer was subsequently changed by the  
Language Section to read: (T. 36,597)

"A: I asked what that telegram was about, for  
which --

"Q: Was that from Marquis KIDO or from some one  
else?"

from testifying, he refused to cross-examine him.

1 MATSUDAIRA was not cross-examined by the prosecution  
2 either.

3 313. The prosecution comments on the fact  
4 that KIDO failed to call MATSUDAIRA but only examined  
5 him when he was called as a witness for TOGO "although  
6 the matter was outside the scope of his affidavit."  
7 The prosecution refers to this as if it were something  
8 unusual. Time after time during the course of this  
9 trial the Tribunal granted permission to other defense  
10 counsel to ask questions of witnesses on direct  
11 examination outside the scope of the original affidavit.  
12 Furthermore no issue had been raised between TOGO  
13 and KIDO at the time KIDO testified and there was  
14 no necessity for calling MATSUDAIRA at that time on  
15 this point to corroborate KIDO. The issue arose in  
16 TOGO's affidavit which was served prior to the time  
17 M. TSUDAIRA took the stand for TOGO. The prosecution  
18 also complains that there are other points on which  
19

20 949 - Contd.

21 "A. From Marquis KIDO.  
22 "Q. And did he tell you the details as well as  
23 the contents?  
24 "A. No, I don't think at that time that I heard  
25 anything of the contents from him. He said  
he was at that time unfamiliar with the details  
of the telegram - of the contents of the  
telegram.

950. T. 35,602.

MATSUDAIRA might have corroborated or contradicted  
1 KIDO. If the prosecution thought he would contradict  
2 KIDO why didn't it cross-examine him at that time,  
3 or call him in rebuttal?

314. The prosecution's usual guess that  
5 KIDO should have known the whereabouts of the telegram  
6 during the day of December 7th is of course without  
7 foundation and unsupported by the evidence. <sup>951</sup> That  
8 was not his duty. That it has no basis in fact is  
9 apparent from the prosecution's subsequent sentence  
10 that it was the practice of the Foreign Ministry and  
11 the Chief of Staff to collect copies of cables.

315. KIDO arrived at his office at 7:15 a.m.  
13 on the morning of December 8th, 1941. Prior to that,  
14 a little after 6 o'clock one of the aide de camps  
15 had called him on the telephone and told him about  
16 the naval attack on Hawaii. He did not go into details. <sup>952</sup>  
17 KIDO testified this was the first information he had  
18 about the Pearl Harbor Attack. He also testified on  
19 direct examination that before leaving his home he  
20 heard over the radio about the attack. <sup>953</sup> It was  
21 shown on cross-examination that it took him about ten  
22 minutes to drive from his home to the Imperial Palace. <sup>954</sup>

951. Par. JJ-81, T. 41,121.

952. Aff. par. 242, T. 31,048.

953. Aff. par. 243, T. 31,050.

954. T. 31,606.

1 Thus he had time to hear the radio report before he  
2 left home. The prosecution did not cross-examine him  
3 on his telephone conversation with the aide de camp  
4 nor did it cross-examine him on the report he heard  
5 over the radio. KIDO did not say in his affidavit  
6 that it was announced over the radio that Hawaii or  
7 Pearl Harbor was mentioned. He stated he received  
8 that information from the Aide de Camp. The prosecution  
9 says that if he heard the radio report "it would not  
10 account for the knowledge shown in the Diary." The  
11 prosecution overlooks KIDO's testimony that he heard  
12 about Hawaii from the Aide de Camp. The prosecution  
13 criticizes the defense for not calling corroborative  
14 evidence of this. It was not challenged nor contested  
15 on cross-examination. If KIDO's statement was not  
16 correct, the prosecution undoubtedly would have called  
17 a witness in rebuttal to disprove it. It did not do  
18 so nor has it accounted for the absence of such rebuttal  
19 evidence. This testimony therefore stands unimpeached.  
20

21       316. In addition the prosecution endeavors  
22 to create the impression that KIDO knew about the  
23 attack on Pearl Harbor ahead of time although there  
24 is no evidence to support it. It fails to remind the  
25 Tribunal however of the vast amount of evidence that  
this attack was highly secretive known only to a limited

number of top ranking officials and was a High Command matter and not a Cabinet matter. In view of the fact that KIDO was regarded as pro-American and pro-British and his guard had been increased shortly before it can well be imagined that KIDO would be one of the last who would have been informed by the High Command of the proposed attack. If the prosecution had any doubts about KIDO's evidence on this, why didn't it cross-examine him? In any event, the prosecution complaint is not well founded. For example corroborative evidence definitely shows that no civilian officials knew of the Pearl Harbor Attack as testified to by SHIMADA. SHIMADA also testified on cross-examination that there would be no chance of Marquis KIDO knowing of the Pearl Harbor Attack before it occurred. He was not one of the high ranking officials of the Japanese Government. TOJO stated that he, that is, TOJO, was informed of it very secretly, but the other cabinet members did not know of it.

317. The prosecution claims that had the Emperor commanded Prime Minister TOJO not to commence the Pacific War, it would not have occurred and that, therefore, KIDO should be held responsible for his

955. T. 34,796.

956. T. 34,818.

957. T. 34,796.

958. T. 36,390-36,391.

failure to advise the Emperor to issue such a command  
1 to Premier TOJO. The evidence clearly shows that  
2 KIDO submitted his views to avoid the Pacific War to  
3 the Emperor on frequent occasions. If it is to be  
4 contended that KIDO should have advised the Emperor  
5 not to commence the Pacific War and that the Emperor  
6 should have followed his advice (this is the desirable  
7 state of affairs referred to by the prosecution), just  
8 what was the raisen d'etre of the Japanese Government.  
9 Had KIDO the authority to command the Prime Minister,  
10 the High Command and the Cabinet? Does the prosecution  
11 contend that KIDO was Japan's ruler - more powerful  
12 than the Emperor, the Cabinet and the High Command  
13 in reality? Does the prosecution contend that KIDO  
14 should have been such a powerful ruler of Japan in  
15 order to be exonerated now?

318. Is it fair play to denounce KIDO by  
18 capitalizing on an unfortunate circumstance, to say  
19 the least, where he is unable to adduce clear convincing  
20 and clinching evidence, aside from his diary and other  
21 evidence, by calling the Emperor as a witness to  
22 corroborate him on his conversations with the Emperor  
23 which would prove the groundlessness of the prosecution's  
24 allegations that KIDO effected a compromise with the  
25 "Gumbatsu", that he recommended a second KONOYE Cabinet

1 to the Emperor to make the Army's position favorable,  
2 that he participated in common planning and conspiracy  
3 for aggressive wars, that he was responsible for atrocities  
4 that he recommended TOJO to the Emperor as the succeeding  
5 Prime Minister for the purpose of waging war and that  
6 he persuaded the Emperor to approve the Pacific War?  
7 Let us be fair, with a man's life at stake.

8 319. Following the example of the King of  
9 England, the Emperor kept himself within a self-imposed  
10 pale of power toward the government as a sovereign of  
11 a constitutional monarchy. The Emperor reigns but  
12 does not govern, according to the interpretation of  
13 the Japanese Constitution. He expresses his own desires  
14 to the Prime Minister before the government or the  
15 High Command makes any decision and cautions the High  
16 Command as in the case of the Imperial Conference on  
17 September 6th, 1941, but the government makes a decision  
18 on its own judgment and does not necessarily make a  
19 decision as desired by the Emperor on some occasions  
20 as testified to by TOJO. <sup>959</sup> Where the government  
21 makes a decision and petitions the Emperor to sanction  
22 it, the Emperor never vetoes it though he personally  
23 does not approve of it. This was also testified to  
24 by TOJO. <sup>960</sup> This practice was strictly observed by all

959. T. 36,381. 960. Ibid.

1 Emperors since the establishment of the constitution.  
2 The prosecution persistently denounces KIDO and  
3 attempts to incriminate him for his alleged negative  
4 responsibility during his tenure of office as Lord  
5 Keeper of the Privy Seal in spite of Japanese  
6 jurisdiction, unwritten law and political reality.

7 THE PRESIDENT: We will recess for fifteen  
8 minutes.

9 (Whereupon, at 1445, a recess was  
10 taken until 1500, after which the proceed-  
11 ings were resumed as follows:)

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MARSHAL OF THE COURT: The International  
1 Military Tribunal for the Far East is now resumed.  
2  
THE PRESIDENT: Mr. Logan.  
3  
MR. LOGAN: If the Tribunal please, I will  
4 continue reading KIDO's summation, page 260, paragraph  
5  
319a.

XII. (h) Efforts for Peace.

7  
8 319a. KIDO testified <sup>961</sup> that for the first  
9 six months after the outbreak of the war Japan was  
10 intoxicated with an unbroken string of victories,  
11 gained by the Japanese armed forces at various fronts  
12 in quick succession. As a patriotic Japanese he  
13 naturally was embued with a patriotic spirit, but  
14 nevertheless he could not believe that Japan would  
15 be able to emerge victorious from the war. He thought  
16 it was necessary for him to exert every effort possible  
17 to pave the way for peace with America and Great  
18 Britain. On February 5, 1942 he was received in  
19 audience by the Emperor and the talk drifted in the  
20 direction of peace. KIDO took occasion to submit  
21 his views and opinions to the Emperor, during the  
22 course of which he stated that although the shortest  
23 way to peace would be to fight it out, at the same  
24 time it would be necessary to seize occasion to return  
25

961. Aff. par. 246, Tr. 31052-31053.

1 to peace as soon as possible for the purpose of  
2 minimizing the ravages of war.<sup>962</sup>

3 320. By reading the entire conversation  
4 KIDO had with the Emperor at this time it will  
5 be seen that KIDO was giving his opinions to the  
6 Emperor. Any conclusion that it shows KIDO was  
7 receiving foreign press reports is far fetched.  
8 There can be no question that KIDO told the Emperor  
9 that an early return to peace should be attempted  
10 because as shown in his diary of February 6, 1942,  
11 the Deputy Grand Chamberlain told him that the Emperor  
12 had expressed to the Empress his impressions about  
13 KIDO's views which he had presented to the Emperor  
14 on the day previous.<sup>963</sup> And it was further stated by  
15 KIDO in his diary, "Yesterday when I was received in  
16 audience by the Emperor, I submitted my views to His  
17 Majesty that the Pacific War would not easily end and  
18 therefore that the shortest way to peace would be to  
19 fight it out, while paying due attention to construc-  
20 tion."<sup>964</sup> His diary for February 12, 1942 further  
21 affirms KIDO's testimony on this point.<sup>965</sup> In an  
22 audience with the Emperor on that date the Emperor

24 962. Aff. par. 247, Tr. 31053-31054.

25 963. Aff. par. 248, Tr. 31055.

964. Ibid.

965. Aff. par. 249, Tr. 31055-31056-31057.

1 told KIDO that he had had a conversation with Prime  
2 Minister TOJO wherein he had told him, "I presume  
3 that you are paying full attention so as not to miss  
4 the opportunity to terminate the war. It is not  
5 desirable for the sake of humanity and peace to have  
6 the war drag on needlessly, extending the ravages  
7 wrought by it."<sup>966</sup>

8       321. TOGO's further peeve against KIDO for  
9 not advising him of the Emperor's foregoing remarks  
10 to TOJO are unjustifiable.<sup>967</sup> Since the Emperor had  
11 conveyed his message to TOJO it was then a matter  
12 for TOJO to take up with his cabinet members, not a  
13 matter for KIDO to discuss with the cabinet members.  
14 Furthermore KIDO had to be extremely cautious with  
15 whom he discussed peace at that time when Japan was  
16 riding high, wide and handsome on waves of victories.<sup>968</sup>  
17 Even TOGO admitted that KIDO had to exercise the ut-  
18 most caution.<sup>969</sup> Apparently TOGO's peeve against KIDO  
19 was based on an erroneous assumption that KIDO had  
20 spoken to the Prime Minister about an early peace,  
21 but this was straightened out on the cross-examination  
22 of TOGO,<sup>970</sup> and shown that KIDO had spoken to the

24       966. Aff. par. 249, Tr. 31056.

25       967. Tr. 35740; Tr. 35807-35809.

968. Aff. par. 246, Tr. 31053.

969. Tr. 35816.

970. Ibid.

Emperor, and the Emperor had spoken to TOJO. Thus  
1 contrary to the prosecution's claim that KIDO did  
2 not speak to the Emperor about an early peace, we  
3 find KIDO's testimony and diary entries that he did,  
4 corroborated by TOGO.

5 322. Although TOGO admitted that the  
6 responsible authority to advise him of the desire of  
7 the Emperor for peace was the Prime Minister he felt  
8 that the Lord Keeper should have told him.<sup>971</sup> He  
9 nevertheless admitted that KIDO was not an advisor to  
10 TOGO or any other cabinet minister.<sup>972</sup> TOGO makes  
11 the general statement that cabinet ministers would  
12 tell the Lord Keeper what was told the Emperor and  
13 that the Lord Keeper should convey to the cabinet  
14 ministers the Imperial will. TOGO, however, failed  
15 to advise KIDO either before or after TOGO saw the  
16 Emperor on the morning of December 8, 1941 about the  
17 draft reply of the Emperor to President Roosevelt's  
18 speech. The prosecution's contention<sup>973</sup> that KIDO's  
19 Diary entry of February 6, 1942 does not support his  
20 contention that he spoke with the Emperor about an  
21 early peace is without foundation as both the entries

22  
23  
24 971. Tr. 35809.  
25 972. Tr. 35810.  
973. Par. JJ-83, Tr. 41122-123.

1           of February 6, 1942 and February 12, 1942 clearly  
2           show that the subject matter of both these entries  
3           is practically identical.

4           323. After Singapore fell, on February  
5           16, 1942, KIDO recites<sup>974</sup> that he received reports  
6           of military successes achieved in quick succession.  
7           He also recites pronouncements by the Army and Navy  
8           that war preparations had been carefully made, as  
9           for example, the surprise attack on Pearl Harbor had  
10          been preceded by a mock attack on a harbor similar  
11          thereto; that rigid training in jungle warfare had  
12          been practiced, and landing operations training had  
13          been carried out. These pronouncements captured the  
14          fancy and imagination of the people, as a result of  
15          which they reposed greater confidence in the fighting  
16          services.

17           324. KIDO, who did not know of this previous  
18          training, was skeptical and believed that even if  
19          these were true, Japan could not maintain her successes  
20          for any long period of time. He believed<sup>975</sup> the  
21          differences in the resources of the contending  
22          countries would eventually decide the issue, that  
23          Japan with her meager resources would come to grief,

24          974. Aff. par. 250, Tr. 31058.  
25          975. Ibid.

1 and that although the attack on Pearl Harbor was a  
2 big success, at the same time it went a long way  
3 toward stirring up a feeling of hostility in America  
4 against Japan. Certainly neither this resume nor  
5 that contained in KIDO's affidavit<sup>976</sup> justifies any  
6 conclusion that KIDO was receiving foreign press  
7 reports.<sup>977</sup>

8 325. KIDO's Diary on April 11, 1942<sup>978</sup>  
9 records the conversation KIDO had with SHIGEMITSU  
10 about conditions in China concerning which KIDO  
11 said, "I cannot but think that the future situation  
12 will be very grave."<sup>979</sup> His diary on June 11, 1942  
13 sets forth a conversation KIDO had with YOSHIDA,  
14 Shigeru, former Ambassador to England, about KONOYE  
15 visiting Europe to pave the way for peace. As KIDO's  
16 Diary records, KIDO said: "I replied to him that I  
17 have, of course, no objection to the basic idea that  
18 we must exert ourselves to terminate the war as soon  
19 as possible for the sake of world peace. \* \* \*"

20 326. Thereafter the fortunes of war turned  
21 against Japan. KIDO continued his efforts for peace  
22 as shown in his diary and testimony.<sup>980</sup> He discussed

24 976. Aff. par. 247, Tr. 31053-31054.

25 977. Par. JJ-84, Tr. 41123.

978. Aff. par. 253, Tr. 31061-31062.

979. Aff. par. 256, Tr. 31065-31066.

980. Aff. para. 259-260, Tr. 31068-31069.

the possibilities of effecting peace with Marquis MATSUDAIRA and Prince KONOYE on February 4, 1943,  
1 and had a talk with the Emperor on the same subject  
2 on March 30, 1943.<sup>981</sup> On May 13, 1943 he discussed  
3 with Foreign Minister SHIGEMITSU his ideas for peace  
4 which envisaged control of the army through a prince  
5 of the blood.<sup>982</sup> The next day, May 14, 1943, as  
6 shown in his diary, KIDO told Prince TAKAMATSU that  
7 it would be hard " \* \* \* to reconcile the demands of  
8 the military with the terms of peace and that in such  
9 a case we should have to rely on the Prince's special  
10 assistance in solving the problem."<sup>983</sup>

327. At the beginning of 1944 the outlook  
13 for Japan was extremely dreary. In his diary of  
14 January 6, 1944<sup>984</sup> KIDO records a peace plan which he  
15 had discussed with Marquis MATSUDAIRA. Contrary to  
16 the prosecution's contention KIDO accurately summarized  
17 this entry in his affidavit,<sup>985</sup> and the prosecution's  
18 interpretation is misleading. At that time the war  
19 situation had been developing so adversely that Japan  
20 was compelled to take the defensive on all sectors.  
21 Japan's victory was inconceivable. As shown in the  
22

23 981. Aff. par. 259-260, Tr. 31068-31069.

24 982. Ex. 1274; Aff. par. 261, Tr. 31069-31070.

25 983. Aff. par. 261, Tr. 31071.

984. Ex. 1276, Tr. 11367-11371.

985. Aff. par. 262, Tr. 31071-31073.

1 diary entry, KIDO's idea was that Japan should act  
2 on her own judgment in the event Germany surrendered  
3 unconditionally; that if the so-called A.B.C.D.  
4 encirclement line was broken, which was the aim in  
5 the Imperial Proclamation of War, Japan's aims would  
6 have been fulfilled, and KIDO believed that there  
7 would be no hope of setting up a peace plan as stated  
8 in his diary, "unless it includes very considerable  
9 concessions on our part."<sup>986</sup> In effecting his plan  
10 for peace he set forth five points:<sup>987</sup>

11 (1). Problems of the Pacific shall be  
12 dealt with by nations bordering on that ocean.

13 (2). The Pacific question should be handled  
14 by a joint commission of Japan, USSR, China, United  
15 States of America, and Great Britain.

16 (3). The area under Japanese occupation  
17 should be demilitarized.

18 (4). The smaller nations in the Pacific  
19 area to be neutralized permanently.

20 (5). The economic policies in these regions  
21 should be based on freedom, reciprocity, and equal  
22 opportunity.

23 He stated in this diary that measures to  
24 effect the peace may be taken with the USSR as a

25 986. Ex. 1276, Tr. 11369.

987. Aff. par. 262, Tr. 31071-31072; Ex. 1276,  
Tr. 11379-11380.

1 go-between. At that time the Soviet Union was  
2 maintaining neutrality towards Japan, and it is  
3 quite apparent that judging by the developments of  
4 the war situation, the Soviet Union could not be  
5 excluded from the peace fabric in the Pacific, as it  
6 might lead to a constant dispute. With Soviet par-  
7 ticipation in the proposed commission a well-balanced  
8 program could be effected even from the racial point  
9 of view. Interposed as it was between the United  
10 States and the Soviet Union, which were possessed of  
11 oil resources, it would be extremely difficult for  
12 Japan to maintain her prestige as an independent  
13 power, and there would be no course left to Japan  
14 but to have recourse to diplomacy for safeguarding  
15 her independence. KIDO also stated in his affidavit  
16 that Japan should devote the coming century to  
17 fostering her national resources at home, and that  
18 during this period she should cooperate with the  
19 Soviet Union and China, and as set forth in his  
20 diary: " \* \* \* avoid being isolated and attacked all  
21 at once by the nations of the world as a colored  
22 race.\* \* \*"<sup>988</sup> In other words, that Japan should  
23 build up a defense to meet all changing circumstances  
24 and save its real strength. Upon discussing this  
25 988. Ex. 1276, Tr. 11371.

plan with Foreign Minister SHIGEMITSU, his opinion  
1 was more pessimistic than KIDO's and as a result KIDO  
2 maintained silence on this plan to government circles.

328. KIDO had further discussions with  
4 Foreign Minister SHIGEMITSU--for example on June 26,  
5 1944,<sup>989</sup> and as a result of which it was apparent that  
6 the government at that time had no intention of taking  
7 any peace action, and if the secret leaked out that  
8 they were endeavoring to secure peace, it would defeat  
9 the purpose because the fighting services would  
10 stiffen in their attitude and it would be extremely  
11 difficult to take peace moves in that direction.

SHIGEMITSU suggested that the Senior Statesmen be  
13 made to serve close to the Emperor so as to strengthen  
14 the Imperial Court. KIDO stated the service they  
15 would be able to render would not only be problematical,  
16 but it might stimulate the public into regarding them  
17 as Japanese Badogolios. This, of course, referred to  
18 the fact that the Italian Monarchy was ruined by  
19 Badoglio's peace, and KIDO was arguing to avoid a  
20 similar fate for Japan.<sup>990</sup> KIDO and SHIGEMITSU  
21 believed that the only course left would be to take  
22 action on the strength of an Imperial decision when  
23 the opportunity presented itself, he to assume

989. Aff. par. 263, Tr. 31074-31075.

990. Aff. par. 263, Tr. 31075.

responsibility for the Imperial Court and SHIGEMITSU  
1 to act on behalf of the Government. KIDO also dis-  
2 cussed what measures might be taken with MATSUDAIRA,  
3 Tsuneo, Minister of the Imperial Household.<sup>991</sup>

4 329. The war situation rapidly worsened.  
5 On the one hand the Senior Statesmen became more and  
6 more active and on the other hand the generals and  
7 admirals were meeting more regularly.<sup>992</sup> KIDO  
8 received visits from SHIGEMITSU, Prince KONOYE,  
9 Minister of State KISHI, and Home Minister ANDO, at  
10 various times in July, 1944.<sup>993</sup> The informal deci-  
11 sion of the Senior Statesmen is shown in KIDO's  
12 Diary on July 17, 1944.<sup>994</sup>

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991. Diary, June 29, 1944; Aff. par. 264, Tr. 31076.

23

992. Aff. par. 265, Tr. 31076.

24

993. Ibid.

25

994. Aff. par. 266, Tr. 31077-31078.

330. The TOJO Cabinet resigned en bloc on  
1 July 18, 1944, placing the responsibility for the cabi-  
2 net change on the Senior Statesmen. The next day  
3 the Senior Statesmen met to select a succeeding prime  
4 minister. A comprehensive discussion was had by the  
5 Senior Statesmen, and KIDO reported the results to the  
6 Throne. The eventual decision was that KOISO would be  
7 appointed the next prime minister. KIDO's efforts in  
8 having an Imperial mandate issued to Admiral YONAI  
9 as Navy Minister and Deputy Prime Minister are set  
10 forth in his affidavit. This cabinet was known  
11 as the KOISO-YONAI Coalition Cabinet. When the Emperor  
12 asked KIDO if he thought, judging from the line-up at  
13 the Installation Ceremony, whether or not TOJO might  
14 resume his post of War Minister as shown in his diary,  
15 997  
16 "I replied that I feared that it would have an unfavor-  
17 able effect on the political situation."

331. The prosecution states that at this  
19 conference KIDO "... twice explained that what he  
20 meant by 'finishing the war' was to choose an army  
21 man for the strengthening of home defenses, the in-  
22 crease of army strength in the homeland and that of  
23 the military police."<sup>998</sup> KIDO made no such explanation.

25 995. Aff. par. 268, tr. 31,080

996. Aff. par. 270-271, tr. 31,103-31,104-31,105

997. Ex. 1278, p. 12, as Cor. by Lang. Sec., tr. 16,195

998. Par. JJ-86, tr. 41,126

The prosecution has taken two disjointed phrases used  
1 at widely different times by KIDO in this conference  
2 and united them into one idea. At the beginning of  
3 the conference the question arose as to the advisability  
4 of the military confining themselves to the field  
5 of strategy and command, and that civil officials  
6 should handle political affairs. In view of the long-  
7 standing practice in Japan, some of the Senior Statesmen  
8 believed that it would be difficult for Japan to reach  
9 "this point in one jump." It was while discussing  
10 this policy that KIDO said, "In short, it is a practical  
11 problem. Our first object is to finish the war.  
12 Even if we tried to reform the political situation  
13 simultaneously, it would be impossible to do. To think  
14 on two planes at this time will obscure our object-  
15 1000  
16 1000  
17 1000  
18 1000  
19 1000  
20 1000  
21 1000  
22 1000  
23 1000  
24 1000  
25 1000  
ive." The discussion then turned to the question  
as to whether the next premier should be an army man  
or a navy man. It was during the course of this  
latter discussion that KIDO said, "The strengthening  
of home defenses, the increase of army strength in the  
homeland and that of the military police require that  
we choose someone from the army." From this it  
is quite apparent that the prosecution's contention is  
999. Aff. par. 269, tr. 31,087  
1000. Aff. par. 269, tr. 31,087  
1001. Aff. par. 269, tr. 31,092

naive.

18           333. On April 5, 1945, Premier KOISO resigned.  
19 Because YONAI as outgoing Navy Minister would not be  
20 able to attend the Senior Statesmen Conference, KIDO  
21 asked his opinion beforehand about a successor to  
22 Premier KOISO, and YONAI approved Admiral SUZUKI, as  
23    1006  
24 is shown in KIDO's Diary.      The Senior Statesmen

24  
1002. Aff. par. 274, tr. 31, 107-31, 108-31, 109  
25 1003. Aff. par. 276, tr. 31, 111-31, 112  
1004. Aff. par. 276, tr. 31, 111  
1005. Aff. par. 278-279, tr. 31, 113-31, 114  
1006. Pros. ex. 1282, tr. 11, 351; tr. 16, 195, p. 3

1 Conference was held on April 5, 1945. The prosecution  
2 processed part of this conference, but the complete  
3 recordation is contained in KIDO's affidavit. This  
4 meeting clearly shows that in choosing SUZUKI as Premier  
5 the Elder Statesmen, as well as KIDO, phrased their  
6 words very particularly and meaningfully. Their inten-  
7 tion led to SUZUKI's selection as a man capable of  
8 bringing the war to an end.

9       334. While it is true that KIDO did say  
10 that he was of the same opinion as HIRANUMA after  
11 HIRANUMA talked at length on various matters, it is  
12 quite apparent from reading the complete conference  
13 that KIDO was definitely in favor of SUZUKI for the  
14 purposes of bringing about peace. KIDO stated, "The  
15 public does not always cooperate earnestly with the  
16 measures taken by the government," and after discussing  
17 various problems, stated, "... the incoming cabinet  
18 must be one that will place confidence in the people."  
19 He further stated, "... now that the Japanese soil is  
20 on the verge of becoming a battlefield, strengthening  
21 of the government has become all the more necessary,  
22 and therefore an imposing and sedate cabinet, which  
23 has the confidence of the people, must be established."

24       100<sup>7</sup>, 112, 1282, aff. par. 285, tr. 31,122, tr. 31,147

He expressed his hope that SUZUKI would rise to the occasion. It was at this point that KIDO and TOJO had a heated discussion. TOJO would not yield to the appointment of a non-army man, and, on the contrary, he went the length of saying that if such a thing was done the army might look the other way (meaning a coup d'etat by the army). KIDO replied that the nation would look the other way if an army man was chosen. The uncontradicted evidence is that none of the conferees touched upon peace moves explicitly. In view of General TOJO's presence at the conference, any tactless remark might have stimulated the army to unscrupulous counter measures. All of the conferees except General TOJO had a tacit understanding on this point, which was given expression in their desires for "a man free from any commitment in the past," as expressed by  
1008  
KONOYE and HIRANUMA.

335. The further efforts of KIDO to have Baron SUZUKI accept the premiership are contained in  
1009 KIDO's affidavit. KIDO continued to have peace talks with various people such as TOGO, Professors  
1010 NAMBARA and TAKAGI. On June 8, 1945, KIDO drafted a tentative peace plan, which is set forth in his diary  
1008. Aff. par. 285, tr. 31,136  
1009. Aff. par. 286, tr. 31,142-31,143  
1010. Aff. par. 288, tr. 31,145

for that date. 1011 KIDO continued peace talks with  
1 Chief Secretary MATSUDAIRA, Mr. KASE, of the Foreign  
2 Office, 1012 and Colonel MATSUTANI. 1013 He further dis-  
3 cussed this with Prime Minister SUZUKI and Navy Minister  
4 YONAI, TOGO, and ANAMI in June 1945. 1014

336. On June 20, 1945, KIDO suggested to the  
Emperor that he summon the component members of the  
Supreme Council for Discussion of War, especially since  
Foreign Minister TOGO felt so apprehensive about the  
recent decision of the Imperial Conference. 1015 On  
June 21, 22, 1945, KIDO had further audiences with the  
Emperor. As shown in his diary of the latter date,  
Imperial wishes for the termination of the war were con-  
veyed by the Emperor to the members of the Supreme War  
1016 Directing Council. On June 25, 1945, Baron HIRA-  
NUMA approved of KIDO's tentative peace plan. Prior to  
that the government, at the instance of Foreign Minis-  
ter TOGO, had opened secret negotiations with the  
Soviet Ambassador in Tokyo through Mr. HIROTA, but no  
progress was made. No agreement of views was reached  
by the Supreme Council for the Direction of War. Time  
was being wasted. KIDO urged haste. As a result the

1011. Aff. par. 289; tr. 31,146  
1012. Tr. 31,226  
1013. Aff. par. 290, tr. 31,151  
1014. Aff. par. 291-292-293-294-295, tr. 31,152-31,158  
1015. Diary, June 20, 1945; Aff. par. 296, tr. 31,160  
1016. Diary, June 21, 22, 1945; Aff. paras. 297-298;  
tr. 31,161-31,162-31,163

Emperor on July 7, 1945, summoned Prime Minister SUZUKI  
1 to the palace and commanded him to enter into peace  
2 negotiations immediately. His Majesty suggested  
3 that the Soviet Union should be frankly asked for media-  
4 tion and a special envoy dispatched there with the  
5 Emperor's personal message. KONOYE accepted the  
6 order of the Emperor to go to the USSR, but prior to  
7 the reply of the Soviet Union the Potsdam Declaration  
8 was issued by the Allies. As testified to by  
9 TAKAGI, Yasaka, at this time KIDO favored peace efforts  
10 through the USSR, due to her neutral position, and also  
11 wanted to keep two routes open for peace. KIDO told  
12 him the opportunity was then ripe for peace. On  
13 August 6, 1945, the atomic bomb was dropped at Hiroshima.  
14 On August 9, 1945, the Soviet Union declared war on  
15 Japan.

337. On the morning of August 9, 1945, KIDO  
had an audience with the Emperor, advising him to  
accept the Potsdam Declaration and terminate the war.  
The Supreme Council for the Direction of War discussed  
the acceptance of the Potsdam Declaration on the basis  
of four conditions, but they could not arrive at a

1017. Diary, July 7, 1947; Aff. par. 299, tr. 31,114-31,115  
1018. Diary, July 12, 1945; Aff. paras. 300-301,  
tr. 31,166-31,171  
1019. Tr. 31,642-31,643  
1020. Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,174-31,177

1 decision. Later the same day, August 9, 1945, the  
2 cabinet was unable to arrive at a decision to accept  
3 the Potsdam Declaration, and so they decided to submit  
4 the question to the Emperor for decision. That  
5 evening an Imperial Conference was held in the presence  
6 of the Emperor when it was decided to accept the Pots-  
7 dam Declaration on the sole condition of the reaffirma-  
8 tion of the Emperor's sovereignty and the Imperial  
9 House.  
10 1021  
11 1022

12 338. On August 10, 1945, an atomic bomb was  
13 dropped at Nagasaki, as a result of which moves and  
14 counter moves between the peace and war parties in  
15 Japan occurred. KIDO foresaw difficulties ahead to  
16 overcome, and he thought there would be no course  
17 left but to broadcast an Imperial Rescript to the nation  
18 on the part of the Emperor terminating the war. He  
19 conferred with Mr. ISHIWATA, Minister of the Imperial  
20 Household, who approved of his proposal, and thereafter  
21 this was approved by the Emperor.

22  
23  
24  
25 1021. Diary, Aug. 9, 1945; Aff. par. 302, tr. 31,177  
- 1022. Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,177

339. On August 12, 1945 the reply from the  
1 Allies was received and it was submitted to the throne  
2 by Foreign Minister TOGO. There was some opposition  
3 to paragraph four of the Allied reply, but KIDO was  
4 of the opinion that Japan's move should not be swayed  
5 by the opinions of individuals, but that they must abide  
6 by the interpretation of responsible authorities.  
1024

The Japanese who were jealous of safeguarding the  
7 national polity and the military stiffened in attitude  
8 after the Allied reply was received. Difficulty was  
9 experienced in opening a meeting of the Supreme Council  
10 for Discussion of War. 1025 On August 12, 1945 KIDO  
11 decided to pass his nights in his office room without  
12 returning to his home, so that he could be of assistance  
13 to the Emperor. 1026 ANAMI contended that paragraph  
14 four of the Allied reply should not be accepted.  
1027

340. Although Prime Minister SUZUKI exerted  
17 extraordinary efforts, the meeting of the Supreme Council  
18 1028 for the Direction of War was not held on August 13.  
19 On the morning of August 14, 1945, because of handbills  
20 which were being dropped throughout the country, KIDO  
21 felt that indignation and confusion would result, and  
22

1024. Aff. par. 308, T. 31,187

1025. Aff. par. 306, T. 31,186

1026. Diary, Aug. 12, 1945; Aff. par. 308, T. 31,187

1027. Aff. par. 309, T. 31,188

1028. Aff. par. 310, T. 31,189

the situation might get out of control. He submitted his views to the Emperor urging him to command the Government without further loss of time to go through the formalities for terminating the war.<sup>1029</sup> As the High Command did not approve of the convocation of the Supreme Council for the Direction of War, KIDO and Prime Minister SUZUKI advised the Emperor to invoke an Imperial Conference, which was done, and at 11 A.M. on August 14, 1945 it was finally decided to terminate the war.<sup>1030</sup> The Emperor had his message recorded on a phonograph disc.<sup>1031</sup>

341. KIDO was advised that the Imperial Guard Division was rebellious and that night they occupied and cut off the communication facilities of the Imperial Household Department.<sup>1032</sup> His Majesty's library was surrounded. KIDO took refuge in the room of the Court physician, destroyed all his secret important documents, and later went to the underground vault room, together with ISHIWATA, Minister of the Imperial Household. The Imperial Household Department was completely isolated from the outside world. Later that morning the situation was controlled by General TANAKA, Seiichi. During the night the revolutionaries had searched for KIDO at least

1029. Aff. par. 311, T. 31, 189-90

1030. Aff. par. 312, T. 31, 191

1031. Diary Aug. 14, 1945; Aff. paras. 313-314, T. 31, 191-31, 194.

1032. Aff. par. 315, T. 31, 195

1 half a dozen times. <sup>1033</sup> They were also looking for the  
2 phonograph record, and at noon that day the Emperor  
3 broadcast the Imperial Rescript. That same morning  
4 KIDO's home was raided by gendarmes seeking to assassin-  
5 ate him. <sup>1034</sup> On the morning of August 16 the same group  
6 went to the residence of Mr. WADA, where KIDO stayed  
7 occasionally, for the purpose of assassinating him. This  
8 group later committed suicide at the top of Atago Hill  
9 with hand grenades. <sup>1035</sup>

10 342. The prosecution argues that if it be true  
11 that KIDO advised the Emperor to summon the Supreme  
12 Council for Direction of War and command them to termin-  
13 ate the war, then the Emperor had such power and could  
14 have issued a similar command to prevent the initiation  
15 of war.

16 343. The assistance KIDO rendered to the Emperor  
17 at the time of the commencement of the Pacific War has  
18 been fully dealt with herein before. <sup>1036</sup> On June 18,  
19 1945 when KIDO made his suggestion to the Emperor, the  
20 War Minister and the Chiefs of Staff of the Army and  
21 Navy were expecting a desperate suicide battle on the  
22 mainland in which millions of lives would be lost on

23  
24 1033. Aff. par. 316, T. 31,196  
25 1034. Diary, Aug. 15, 1945; Aff. paras. 315-318,  
T. 31,194-31,197

1035. Aff. par. 319, T. 31,201  
1036. Infra. P. 144-230

both sides.<sup>1037</sup> Needless to say, in KIDO's suggestion it was contemplated that the matter would be fully discussed in the conference which he requested His Majesty to call and at which the Emperor would express his desire for termination of the war. That is exactly what was done. As is shown in KIDO's Diary of June 22, 1945,<sup>1038</sup> the Council was summoned and His Majesty ". . . communicated to them his desire regarding the conclusion of the war." As the diary further shows, the various officials expressed their views.

344. On the early morning of August 10, 1945, as is shown in KIDO's Diary,<sup>1039</sup> at the Imperial Conference at which His Majesty had expressed his desire for acceptance of the Allied reply, it was decided to accept the Potsdam Declaration on the sole condition of reaffirmation of the Emperor's sovereignty and the Imperial House. The Imperial decision is set forth in KIDO's Diary of that day. The Emperor instructed the Foreign Minister to go through the formalities of acceptance of the Potsdam Declaration. Pursuant thereto, Foreign Minister TOGO communicated to the United States of America, Great Britain, U.S.S.R., and China that Japan would accept the Potsdam Declaration on the understanding that any

1037. Aff. par. 295, Tr. 31,157-31,158

1038. Aff. par. 298, T. 31,162

1039. Aff. par. 303, T. 31,178-31,179-31,180

1 demand for alteration of the Emperor's prerogative of  
2 sovereignty was not included in the terms enumerated  
3 in the declaration, hoping that the correctness of such  
4 an understanding would be affirmed by the Allied Powers.<sup>1040</sup>

5       345. The reply of Secretary of State Byrnes  
6 was received on August 12, 1945. Paragraph I stated that  
7 the Emperor's sovereignty would be placed under restric-  
8 tion of the Supreme Commander for the Allied Powers  
9 authorized to take measures deemed necessary for the  
10 enforcement of the surrender terms.<sup>1041</sup> At 11:00 A.M.  
11 on that day the Foreign Minister had an audience with  
12 the Emperor and submitted the contents of the reply to  
13 him. The Emperor told TOGO that the reply from Secretary  
14 of State Byrnes was acceptable and instructed him to  
15 communicate with Premier SUZUKI to that effect, but two  
16 or three cabinet ministers raised objections to the reply,  
17 while the Premier himself was hesitant to accept the  
18 Potsdam Declaration.<sup>1042</sup>

19       346. On August 13, 1945 KIDO thought that  
20 should Japan refuse to accept the Allied reply she would  
21 do so without any valid reason and in consequence the  
22 Allies would find it impossible to understand why Japan  
23 had changed her attitude. The result would be that the

25       1040. T. 35,789

1041. Ex. 4, T. 109

1042. T. 35,609

Emperor would be subjected to criticism, not only from  
1 the Allies but from the whole world. As KIDO stated,  
2 he understood on that date His Majesty had taken his  
3 decision with profound thought that there must be action  
4 pursuant to Imperial decision.<sup>1043</sup>

5       347. On August 14, 1945 when KIDO was received  
6 in audience by the Emperor he urged the Emperor ". . . to  
7 command the government without further loss of time to go  
8 through the formalities for terminating the war."<sup>1044</sup> In  
9 other words, this was merely carrying out the decision  
10 which had been reached at the Imperial Conference of  
11 August 10, 1945. It is to be noted that KIDO did not  
12 advise the Emperor to stop the war by Imperial command.  
13 He was urging that the Emperor lead the way to peace by  
14 commanding the government to take the necessary steps so  
15 that a cabinet would be convened according to Imperial  
16 wishes, at which time the formalities of the termination  
17 of the war would be decided.

18       348. In view of the fact that the High Command  
19 did not approve of the convocation of the Supreme Council  
20 for the Direction of War, KIDO had a conversation with  
21 Premier SUZUKI in which he stressed the necessity of  
22 petitioning the Emperor to convoke a joint Imperial  
23

1043. T. 31,188

1044. Aff. par. 311, T. 31,189-31,190

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24       1043. T. 31,188

25       1044. Aff. par. 311, T. 31,189-31,190

Conference of the cabinet ministers and the Supreme  
1 Council for the Direction of War, and to command the  
2 termination of the war and the drafting of an Imperial  
3 Rescript terminating the war.<sup>1045</sup> Here again, at this  
4 meeting, the Emperor would express his desire of termin-  
5 ating the war and the decision would be left in the hands  
6 of the members of the Conference. The Conference of the  
7 Supreme Council for Direction of War and cabinet minist-  
8 ers was convened by the Emperor on August 14, 1945 at  
9 which the Premier explained Foreign Minister TOGO's  
10 opinion, which favored an acceptance of the declaration,  
11 and he also explained the opposition to it.<sup>1046</sup> The  
12 War Minister and the Chiefs of the General Staffs  
13 maintained the same position of opposition which they  
14 had taken the previous day.<sup>1047</sup> After considerable  
15 discussion, when it was found that there was no unanimity  
16 of opinion, the Premier asked the Emperor to give the  
17 decision.<sup>1048</sup> The Emperor expressed his decision in  
18 favor of the Potsdam Declaration and the government follow-  
19 ed His Majesty's opinion.<sup>1049</sup> As is shown, the Emperor  
20 did not command the government to stop the war before  
21 the question had been fully discussed at the meeting.  
22 The Emperor was asked by the government to choose one  
23 of the two points of view which were discussed at the  
24 1045. Aff. par. 312. Tr. 31,190 1048. T. 35,789-  
25 1046. Tr. 35,789 35,790  
1047. Aff. par. 309, T. 31,188 1049. Ibid.

meeting. The Emperor was asked by the government to  
1 choose one of the two points of view which were discussed  
2 in the meeting.

3           349. In ordinary times, when a divergence of  
4 views existed in the cabinet, a resignation en bloc  
5 would follow, but this, however, is the only one except-  
6 ional case in the whole constitutional history of Japan,  
7 that the cabinet could not reach its decision and asked  
8 the Emperor to decide the policy on behalf of the govern-  
9 ment. Time was of the essence. It was an extremely  
10 critical situation. Lives would have been lost in a  
11 delay which a cabinet change would have entailed. The  
12 Japanese nation was in a high state of excitement due  
13 to the atom bombs and the threatened invasions, but true  
14 to constitutional traditions, the Emperor issued no  
15 command to stop the war.

B.

18 CONVENTIONAL WAR CRIMES AND CRIMES  
19 AGAINST HUMANITY.

20  
21        350. We know of no facts in this case, or law  
22 which points to any responsibility on the part of KIDO  
23 for Conventional War Crimes and Crimes Against Humanity.  
24 There is no evidence that he ordered, caused, or permitted  
25 the commission of any of these crimes alleged in the

Indictment. As Education of Welfare Minister in the  
1 First KONOYE Cabinet and as Home Minister in the  
2 HIRANUMA Cabinet there is no proof that he had any  
3 responsibility or committed any act concerning any  
4 atrocities or that he was the formulator of any policy  
5 instigating the commission of any such act. These were  
6 purely military matters, over which he had no jurisdiction  
7 or control. KIDO was a civilian, not a military man.  
8 Even if he had knowledge of past atrocities, that is no  
9 evidence that he participated in the commission of them,  
10 that he authorized their continuance, or that he was in  
11 a position to prevent them from occurring in the future.

351. As Lord Keeper of the Privy Seal it has  
13 been definitely established that KIDO advised against the  
14 Pacific War. He was not a member of the government nor  
15 of the military. The evidence on this point shows he  
16 had no responsibility or control. <sup>1050</sup> As shown in his  
17 diary of March 13, 1942, <sup>1051</sup> he had a talk with Imperial  
18 Household Minister MATSUUDAIRA about the speech delivered  
19 by Great Britain's Foreign Minister Eden, referring to  
20 the atrocities at Hong Kong. KIDO testified that he  
21 reported this to the Emperor and as a result the Emperor  
22 consulted TOJO. <sup>1052</sup> TOJO examined into the matter and  
23 consulted TOJO. <sup>1052</sup> TOJO examined into the matter and  
24

25 1050. Infra. P. 116-130

1051. Ex. 1985, T. 14, <sup>606</sup>

1052. Aff. par. 251, Tr. 31,059 - 31,060

received a report that there were no such instances as set forth in the speech and that the treatment of prisoners was just and fair. The evidence is that Mr. Eden made a subsequent radio broadcast saying that the situation in Hong Kong had improved. <sup>1053</sup> Neither KIDO nor TOJO were cross-examined by the prosecution on this matter. There is no basis for any contention that KIDO's testimony and his belief should be rejected. There is no evidence that he had any reason not to believe TOJO. Similarly there is no ground for any claim that KIDO's testimony regarding the American air men should be rejected. <sup>1054</sup> KIDO's testimony with regard to the American fliers is unimpeached and substantiated by other evidence in the case. <sup>1055</sup> There is no evidence refuting KIDO's conversations that he had with SHIGEMITSU regarding Swiss protests. Contrary to the prosecution's contention that KIDO never reported to the Emperor or advised him with respect to outrages "which were occurring within a few miles of his office as well as in every theater of war", the prosecution's own exhibit shows that he did report to the Emperor, <sup>1056</sup> even <sup>1053</sup>. Tr. 35,771, 35,772  
1054. Par. JJ-84, Tr. 41,123  
1055. Aff. par. 254, Tr. 31,062; Aff. par. 258,  
23 Tr. 31,067  
1056. Ex. 1987, Tr. 14,608

when requested to do so by Premier TOJO, regarding the  
1 disposition of the Doolittle fliers. At that time TOJO  
2 told him that he was advised of their punishment, which  
3 was going to be inflicted; that is, death, but that TOJO  
4 caused the penalty for most of them to be reduced  
5 according to his Majesty's benevolence. As is also  
6 shown by the diary, he reported this to the Emperor,  
7 pending a report by the Chief of Staff. The Chief of  
8 Staff was the sole responsible authority.<sup>1057</sup> We know  
9 of no law holding knowledge in and of itself is a crime.  
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1056. Ex. 1987, Tr. 14,608.  
24 1057. Aff. par. 258, T. 21,067

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352. Although the prosecution knows that  
1 KIDO had no responsibility for any atrocities, it  
2 grasps at straws and drags this matter into his  
3 summation in a desperate attempt to convict him of  
4 something. It even went so far as to try to prove  
5 as late as November 4, 1947 that he was the head of  
6 <sup>1058</sup> the Kempei Tai. The prosecution cites no legally  
7 acceptable evidence whatsoever, nor does it point to  
8 any law, rule or regulation which could in any stretch  
9 of the imagination indicate that KIDO was responsible  
10 for any Conventional War Crimes or Crimes Against  
11 Humanity. The evidence is that it was not even his  
12 <sup>1059</sup> responsibility to report such matters to the Emperor;  
13 that it was the duty and responsibility of the High  
14 <sup>1060</sup> Command; and that the prosecution well knows this  
15 can be readily seen from its general summation. We  
16 submit that not only has the prosecution failed to  
17 establish KIDO's guilt, but the evidence shows his  
18 innocence.

20 C.  
21

22 MITIGATION

23 353. The Tribunal ruled that evidence in  
24 mitigation should be offered upon the completion of  
25  
1058. Tr. 32,415  
1059. Tr. 36,511  
1060. Ibid.

all evidence and before summation. We are firmly  
1 convinced of KIDO's innocence. In view of the Tri-  
2 bunal's ruling we were forced to make a decision  
3 either to offer evidence in mitigation or forever  
4 lose that valuable right. Upon the assurance of  
5 the Tribunal that there would be no implication of  
6 guilt where such mitigation evidence is offered be-  
7 fore a verdict, the testimony of various witnesses  
8 was offered on behalf of KIDO.<sup>1061</sup> Although the great-  
9 est latitude is permitted in the United States and  
10 British countries in permitting an accused or his  
11 counsel to present mitigating circumstances on be-  
12 half of an accused after he is convicted and before  
13 sentence,<sup>1062</sup> the prosecution here adopted a harsh,  
14 unprecedented and almost cruel policy in objecting  
15 to evidence offered in mitigation. KIDO's evidence  
16 in chief shows that he consistently opposed the  
17 commencement of the Pacific War and immediately  
18 after its commencement he devoted efforts to bring  
19 about its early termination. Notwithstanding this,  
20 the prosecution now claims that his efforts for peace  
21 did not begin until after the war situation began to  
22 develop in a way unfavorable to Japan. We offered  
23 1061. Tr. 38,915, 38,916  
24 1062. Tr. 38,923

in evidence the affidavit of YAMAZAKI, Iwao <sup>1063</sup> to  
1 show that one month after he became Lord Keeper of  
2 the Privy Seal on June 1, 1940 KIDO stayed in office  
3 carrying on his work against the militarists, not-  
4 withstanding the threats made on his life. <sup>1064</sup> It  
5 took courage to accept the position of Lord Keeper  
6 of the Privy Seal, with the past history of assassin-  
7 ations, bombings, and murder surrounding that office  
8 even to the extent of the cold blooded assassination  
9 of the Lord Keeper himself. <sup>1065</sup> The prosecution ob-  
10 jected to YAMAZAKI's affidavit on the ground that  
11 it was a statement of a policy officer who arrested  
12 a number of persons in 1940 who were charged with a  
13 plot to murder certain people including KIDO. <sup>1066</sup> The  
14 objection was sustained. <sup>1067</sup>

16       354. Defense document 3074, affidavit of  
17       YONAI, Mitsumasa was offered in evidence <sup>1068</sup> for the  
18       purpose of showing that KIDO, "shortly after war  
19       commenced was already talking about offers to be  
20       made to restore peace, at a time when the Japanese  
21       were riding high on the waves of victory; that it  
22       was not possible at that time to talk openly about

23       1063. Tr. 38,916  
24       1064. Tr. 38,918

25       1065. Infra par. 59, p. 49  
1066. Tr. 38,918  
1067. Tr. 38,919

restoration of peace, and this evidence shows that  
1 he was discussing it and considering ways and means  
2 of presenting it about at the earliest possible  
3 moment. It also shows that later on, when there was  
4 a plan proposed, proposing a method of continuing the  
5 war, that KIDO was diametrically opposed to it and  
6 still continued to do what he thought was right for  
7 peace.<sup>1069</sup> The prosecution offered technical ob-  
8 jections to the first part of the affidavit and ob-  
9 jected to the balance saying, "the rest of it deals  
10 with peace offers after the outbreak of war, as to  
11 which there is also a great deal of evidence in  
12 existence already."<sup>1070</sup> The objection was sustained.<sup>1071</sup>  
13 Compare this with the prosecution's claim now, that  
14 these efforts did not commence until after the war  
15 became unfavorable to Japan.<sup>1072</sup>

355. In mitigation, Admiral OKADA Keisuke  
17 testified in substance,<sup>1073</sup> over objection by the  
18 prosecution that before the end of the TOJO Cabinet  
19 in July 1944 he spoke with Baron WAKATSUKI, Prince  
20 KONOYE, Baron HIRANUMA and Marquis KIDO who approved  
21 of his idea that it was necessary to have one, who

23  
24 1069. Tr. 38,920

1070. Tr. 38,919-20

1071. Tr. 38,921

1072. Far. JJ-85, Tr. 41,124

1073. Ex. 3912, Tr. 38,925-6

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1069. Tr. 38,920  
1070. Tr. 38,919-20  
1071. Tr. 38,921  
1072. Far. JJ-85, Tr. 41,124  
1073. Ex. 3912, Tr. 38,925-6

would identify himself with the restoration of peace  
1 by the termination of hostilities, join the Cabinet  
2 as a Minister of State. Efforts were made to have  
3 Admiral YONAI reinstated and appointed Navy Minister  
4 but in vain. Success, however, was obtained in hav-  
5 ing Admiral YONAI join the KOISO Cabinet as minister  
6 of the Navy when it was formed after the TOJO  
7 Cabinet fell in July, 1944. He further testified that  
8 in April, 1944 he and KIDO had an extremely confiden-  
9 tial talk about termination of the war. The very  
10 nature of this subject required extreme caution on  
11 his part. The ideas of KIDO and OKADA coincided in  
12 that efforts should be made to end hostilities as  
13 quickly as possible, but it was not a matter which  
14 could be forced. He had previously discussed this  
15 matter with MATSUDAIRA and asked him to transmit his  
16 ideas to KIDO after which he and KIDO had many talks.  
17 OKADA in the last paragraph of his affidavit extended  
18 his congratulations to KIDO "for the success of his  
19 heroic efforts."  
20

356. The affidavit of HIROSE, Histada over  
22 objection of the prosecution was permitted in evi-  
23 1074  
24 dence. He testified that he was Minister of State  
25 without portfolio for a short period of time in the  
1074. Ex. 3913, Tr. 38,927-9

KOISO Cabinet and commencing in August 1945 he was  
1 Mayor of Tokyo and had known KIDO intimately since  
2 1938. He stated KIDO had been watching for a long  
3 time for a chance to conclude the war and made  
4 great efforts towards that end; the circumstances  
5 under which KIDO endeavored to have Admiral YONAI  
6 appointed Vice Prime Minister of the KOISO Cabinet  
7 in July 1944; his efforts to have Admiral SUZUKI  
8 appointed in April, 1945 to realize peace and KIDO's  
9 cooperation with YONAI, the chief pacifist of the  
10 SUZUKI Cabinet. HIROSE arranged meetings between  
11 YONAI and KIDO concerning the peace problems. He  
12 testified that upon the conclusion of the war Navy  
13 Minister YONAI said, "after all, Marquis KIDO is  
14 more responsible than any other for the conclusion  
15 1075  
16 of the war."

17 357. Over objection by the prosecution the  
18 testimony of HOSOKAWA, Morisada was read to the  
19 1076 Tribunal. This witness was Prince KONOYE's son-  
20 in-law and acted at one time as KONOYE's secretary.  
21 He related a conversation he had with Prince KONOYE  
22 wherein the latter stated, "Marquis KIDO's efforts  
23 1077 for terminating the war have been indeed magnificent."  
24

1075. Tr. 38,929

1076. Ex. 3914, Tr. 38,930-1

1077. Tr. 38,930

358. ISHIWATA, Sotoro testified over the  
1 prosecution's objection that he was Imperial House-  
2 hold Minister from June 4, 1945 to January 16, 1946.<sup>1078</sup>  
3 When he assumed the position KIDO emphasized to him  
4 the necessity of grasping the earliest possible  
5 chance for peace negotiations. He saw KIDO at least  
6 two or three times a week while he was in office  
7 and stated that KIDO "bravely, patiently and pain-  
8 fully fought oppositions until the war was finally  
9 terminated on August 15. He was one of the people  
10 who contributed most to the quick realization of the  
11 capitulation."<sup>1079</sup>

13 Sometime about July 20, 1945 he had a con-  
14 versation with KIDO in which KIDO expressed the hope  
15 that he might be spared until the war had been  
16 brought to a close, as there was a possibility of  
17 violence, such as an assassination of him by the  
18 Army. He discussed with him Baron SHIDEHARA as a  
19 possible successor as Lord Keeper of the Privy Seal  
20 in case he should be killed. ISHIWATA and KIDO had  
21 a conversation about the beginning of August regard-  
22 ing a request to the Emperor to broadcast as they  
23 thought it was the best way to prevent internal  
24

1078. Ex. 3915, Tr. 38,931-3  
1079. Tr. 38,932-3

confusion. On August 11, 1945 KIDO told ISHIWATA  
1 that he had spoken to the Emperor about it and ISHI-  
2 WATA gave his approval to the plan. When advised by  
3 KIDO that the Emperor was ready to broadcast ISHI-  
4 WATA made the necessary preparations. He further  
5 testified that on August 14, 1945 a unit of the  
6 Imperial Guards Division seized the Imperial House-  
7 hold Ministry Building. They scattered handbills --  
8 one of which had an item condemning KIDO. The in-  
9 surgent army was looking for both KIDO and ISHIWATA  
10 to kill them and they hid in the vault that night.  
11 Although the prosecution tried to prevent the fore-  
12 going testimony coming to light, it did not cross-  
13 examine any of the witnesses.

1080  
15 359. The affidavit of MACHIMURA, Kingo was  
16 offered in evidence in mitigation but objected to  
17 by the prosecution on the ground that it was a six-  
18 page affidavit describing how certain people searched  
19 for KIDO and tried to assassinate him on the 16th  
20 of August, 1945, and how they did not find him and  
21 the police ultimately besieged them in a park and  
22 ultimately captured them or killed them. The  
23 prosecution stated, "KIDO has already stated the  
24 fact of his attempted assassination in his affidavit  
25 1080. Def. Doc. 3049, Tr. 38,935

1081  
which is not disputed . . ." It was pointed out  
1 that the affidavit showed that the people who tried  
2 to kill KIDO were connected with the military. The  
3 objection was sustained.  
1082

4 360. Should this Tribunal, despite the  
5 overwhelming evidence which we submit conclusively  
6 establishes KIDO's innocence, reach a contrary  
7 verdict, KIDO's successful efforts in saving hund-  
8 reds of thousands of lives, at the risk of his own,  
9 should make one pause and consider whether the  
10 confinement and humiliation already suffered by  
11 him has been unjust.  
12

13 361. In an extremely startling statement  
14 "KIDO's alleged peace efforts" are belittled as "of  
15 minor importance." The undisputed facts in evi-  
16 dence, the evidence offered in mitigation and the  
17 prosecution's own prior statement regarding peace  
18 offers "as to which there is also a great deal of  
19 evidence in existence already" and its deliberate  
20 appraisal "No doubt, if his advice had been taken, we  
21 would not be holding this trial today . . ." must be  
22 entirely disregarded to accept such a view. Is one  
23 who strives for peace and is instrumental in its  
24

25 1081. Tr. 38,936 1084. Tr. 38,920  
1082. Tr. Ibid 1085. Pros. Doc. 0003, Tr. 16,852  
1083. Par. JJ-85, Tr. 41,124

effectuation to be ridiculed and condemned? Are the  
1 efforts of anyone who brings about peace even one day  
2 sooner with the attendant saving of human lives to  
3 be characterized as "of minor importance"? Would  
4 anyone have preferred that the Allied Powers invaded  
5 Japan -- to borrow the thought of that great English  
6 statesman, Winston Churchill in referring to a differ-  
7 ent occasion -- whatever the cost might have been,  
8 fighting on the beaches, on the landing grounds, in  
9 the fields, in the streets and in the hills? By  
10 preventing this, KIDO's efforts, at the risk of his  
11 own life, saved hundreds of thousands of lives.  
12 Surely one must be willing to abandon all standards  
13 of right and wrong in a frenzied effort to convict  
14 in characterizing KIDO's peace efforts as "of minor  
15 importance." Such a position is neither comparable  
16 to, nor in keeping with, the opening address of Mr.  
17 Justice Jackson, Chief of Counsel for the United  
18 States before the Tribunal at Nuernberg November 21,  
19 1945:

21 "That four great nations, flushed with  
22 victory and stung with injury stay the hand of ven-  
23 geance and voluntarily submit their captive enemies  
24 to the judgment of the law is one of the most  
25 1086. Tr. 38,920

significant tributes that Power ever has paid to  
1 Reason."

2 D.

3 CONCLUSION

4 362. In respectfully requesting an acquittal  
5 of the accused KIDO, we adopt and ask the Tribunal to  
6 consider the law as presented by the defense through-  
7 out the trial and in general summation as being de-  
8 cisive, and that on the law and on the facts pre-  
9 sented we urge such a verdict would be overwhelmingly  
10 substantiated.

11 363. In conclusion, with the Tribunal's  
12 permission, I would feel remiss in my duties as an  
13 attorney in failing to add a few personal remarks.  
14

15 It has been with keen appreciation of the opportunity  
16 of assisting in the dispensation of justice on an  
17 international level which has guided my meager ef-  
18 forts before this Tribunal. Perhaps the high virtue  
19 of justice has been transcended in importance by  
20 these proceedings leading the way to a high level of  
21 international morality essential for the creation of  
22 a society of nations. One may listen to a thousand  
23 and one trite arguments on democracy, but in my  
24 humble submission, the mere fact we are here urging  
25 the cause of our erstwhile opponents represents a

363. In conclusion, with the Tribunal's  
permission, I would feel remiss in my duties as an

living democracy.

1           THE PRESIDENT: We will adjourn until  
2 half-past nine Wednesday morning.

3                     (Whereupon, at 1600, an adjourn-  
4                 ment was taken until Wednesday, 7 April,  
5                 1948 at 0930.)

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